2995

Cape Wind Energy EIS Project
U.S. Army Corps of Engineers, New England District
696 Virginia Road, Concord, MA 01742

January 19, 2005

Dear Ms. Karen Kirk-Adams,

As a group of concerned citizens we are writing to inform you that we are wholeheartedly in favor of the Cape Wind clean energy project. United States need for alternative energy sources is long overdue.
We are aware that the Cape Wind clean energy project will provide jobs, help stabilize fuel prices and keep our environment clean.
Again, we completely support this Cape Wind energy project.

Name	Address
LAWRENCE WHITE	4 Regent Drive, DANVERS, MA 01923
Cynthia White	4 Regent Drive Danvers Ma 01923
Elizabeth Petti	714 South Main St Bradford MA 01835
Donna DeLany	9 Ingalls St No Andover MA 01845
David P Delany	" " " "
Anthony Calabro	714 South Main St Bradford MA 01835
Frank DeLisi	11 Royal Crest Drive NoAndoverMa. 01845
Marge Caron	N.A.C.O.A. 120R Main St. No And. MA 01845
Bill Cunningham	MA COA 57 54 WESTMINST LAW MA 01843

p.1

Page#2 Cape Wind Clean ~~Air~~ Energy Project Support

Name	Address
Margaret Dela	41 Royal Crest No Andover MA 01845
[illegible]	180 Chickering Rd 207C No. Andover 01845
Stella Gottlieb	180 Chickering Rd. 109C N. Andover 01845
[illegible] Kimball	25 Royal Crest N Andover
[illegible] Rosen	23 Fernview Ave N. Andover 01845
Leonard Sofrin	7 Royal Crest Dr N. Andover MA 01845
[illegible] Kelly	41 PARK STREET NORTH ANDOVER 01845
Anita Fionte	82 Longwood Ave, N. Andover 01845
Rosalie [illegible]	48 [illegible] Rd Boxford, MA 01921
John [illegible]	5 Magnolia Dr. North Andover 01845
William P. Callahan	550 Osgood St. No. Andover, MA. 01845
[illegible]	14 Redwood Rd Salem, N.H
[illegible] Halleson	104 Salem ST N. Andover Mass 01845
Allen [illegible]	63 FOUNTAIN ST HAVERHILL, MA 01830
[illegible]	43 UNION ST. NO AND MA 01845
Edith Chased	36 Camden St. No. Andover Ma. 01845
[illegible]	8 Belmont St. N. [illegible]
[illegible]	254 MIDDLESEX ST. No And. MA 01845
Shirley M Keegan	15 Dewey St No And Mass 01845
Corinne Long	18 Margate Rd No Andover Ma 01845
Alfred Chased	36 Camden ST No Andover M
Joan Cashman	907 Dale St No. Andover, MA 01845
Mary Leonard	3 Hillview Rd. No. Reading, MA 01864

2995

Page # 3 Cape Wind Clean Energy Project Support

Name	Address
Irene M O'Brien	97 Lake Shore Drive Georgetown, MA.
Anne V. McGravey	14 Stacy Drive No Andover MA. 01845

2996

Adams, Karen K NAE

From: Alperetz@aol.com
Sent: Monday, January 31, 2005 11:59 AM
To: Adams, Karen K NAE
Subject: cape wind support

January 31, 2005

Karen Kirk-Adams
Cape Wind Energy EIS Project
New England District
696 Virginia Road
Concord, MA 01742-2751

Via Fax: 978-318-8303
Via E-Mail: Karen.K.Adams@usace.army.mil

Dear Ms. Adams:

I have reviewed the findings of the US Army Corps of Engineers Cape Wind Draft Environmental Impact Statement and want to go on record as an enthusiastic supporter of the Cape Wind project at Horseshoe Shoal. I am a half time resident of the outer cape at Truro, and treasure the natural beauty and wildlife of our seashore. Cape Wind should be lauded for their efforts to select a site for their innovative experiment with its minimal negative consequences and such important environmental benefits.

I know I join many others who believe in this project as a significant advance in solving energy problems in New England.

Sincerely,

Anne L. Peretz

20 Larchwood Drive Cambridge, MA 02138
112 N. Pamet Road, Truro, MA 02666

Environmental activists accuse the industry of dragging its feet on making improvements, despite knowing what impact the turbines are having on the bird population.

Steve Stengel is a spokesman for Florida Power & Light Co., which owns about half of the 7,000 wind turbines at the Altamont wind farm. He said members of the wind industry have been working for 18 months to come up with ways to reduce the number of bird kills.

But one of the biggest challenges has been to develop an agreement among the many turbine owners.

There are wind farms in 29 states, and they provide about 1 percent of the nation's energy, but that could increase to 6 percent by 2020, according to the American Wind Energy Association. The plains of North Dakota alone could supply one-third of the nation's demand for energy.

Altamont was constructed in the early 1980s, when little was known about the migration patterns of birds in nearby areas. Mistakes made at Altamont have been used to make improvements in new wind farms. No other wind farm in the United States comes close to the bird mortality rates at Altamont because of improved windmill design for newer farms.

The industry says similar updates for Altamont would be too costly.

Past attempts to reduce bird kills have included painting the tips of turbine blades to try to make them more visible to birds, installing screens around generators and putting devices on the towers to discourage perching.

But those measures have failed to substantially lower the number of deaths. Among the measures now being discussed is letting the grass beneath the turbines grow taller and removing nearby rock to provide more cover for prey and discourage birds from flying in the area.

"There is no universal agreement what the exact right thing to do is," Stengel said, noting that a few years ago the recommendation was to build rock piles near the turbines. Now the recommendation is the opposite.

Tracy Cole
1842 Main St
Chatham MA 02633

com/local

SAN FRANCISCO -- An environmental group on Monday sued two wind energy companies, claiming that wind farms they operate on the Altamont Pass are killing thousands of protected birds, including eagles, hawks and owls.

The Center for Biological Diversity filed the lawsuit against Florida Power & Light Group Inc. and NEG Micon A/S of Denmark, which together operate about half of the 5,400 wind turbines in the Altamont Pass, one of California's main centers for wind power production.

Commuters head east on Interstate 580, descending from the summit of the Altamont Pass, where wind turbines hold sway.
THE BEE

Many environmentalists support wind power as a clean source of energy, but some groups here have started complaining that the wind industry hasn't done enough to reduce bird deaths.

The lawsuit, filed in federal court in San Francisco, alleges the companies have known about the problem of bird kills for years but failed to take steps to protect birds, such as making turbine blades more visible.

"To date, the wind industry has not taken a single, meaningful step to reduce bird kills," said Jeff Miller, a spokesman for the Oakland-based center.

"We absolutely support wind energy but we also think the industry should be held accountable."

Steven Stengel, a spokesman for Florida Power & Light, declined to comment on the lawsuit because the company has not yet seen it, but he said the company has been talking to federal regulators over the past 18 months about ways to reduce bird deaths.

:om/local/story/7999473p-8867496c.html

Last Updated: January 4, 2004, 03:46:07 AM PST

2997

LOS ANGELES -- The freezers at the U.S. Fish and Wildlife Department in the Sacramento Valley are overflowing with decapitated and mangled golden eagles, kestrels and red-tailed hawks, victims of the whirling blades of wind turbines.

Scientists estimate as many as 44,000 birds have been killed over the past two decades by these towering machines in the Altamont Pass.

Although the rows of spinning blades at Altamont Pass turn wind into electricity and make Alameda County less dependent on fossil fuel, they also are the end of the line for many predatory birds whose annual migration route includes the pass. The area is home to the largest resident population of golden eagles in the lower 48 states.

Concentrating on their prey on the ground, the birds fly into the blur of the windmill blades.

The bird deaths have led some environmental groups that support wind power to oppose permits for the Altamont site. They argue that enough birds are being killed to affect the resident population of golden eagles -- an average of 50 are killed each year -- and that the wind industry is not doing enough to stop the deaths.

Federal law enforcement agents pick up more than 1,000 dead birds a year, recording the species and cause of death before depositing each bird in the freezer. When space is in short supply, the birds are incinerated.

"On the one hand, we feel we need to reduce our dependency on fossil fuels, and we support the idea of wind power. We would like to see the wind industry continue to remain in business. It conflicts with the goal of protecting birds like the golden eagle, red-tailed hawks and other birds," said Jim Nickles, a spokesman with the U.S. Fish and Wildlife Service.

In Alameda County, several environmental groups are trying to persuade the county to stop reissuing permits for the windmills without requiring additional environmental studies.

The county zoning board approved permanent permits for 1,400

.com/local/story/7966023p-8838956c.html

Frank W. Hoch ◊ Seven Gates Farm ◊ RFD 900 ◊ Vineyard Haven MA 02568

299B

January 26, 2005

U.S. Army Corps of Engineers
New England District
Cape Wind Energy EIS Project
696 Virginia Road
Concord MA 01742

Attention of Karen Kirk Adams

Gentlemen,

In response to your call for public opinions, I am writing in support of wind power and especially of the proposed Nantucket Sound Wind Farm. We desperately must get started on new sources of power production in our area and everywhere else.

Spoiling people's view over the waters as a negative argument is absurdly exaggerated. Very soon we will lose our own long-exploited sources of petroleum and natural gas. To replace those we cannot count on foreign producers in competition with other even greater consumers than we are. Furthermore, we will fall back on our still large coal deposits, but if you think we have an atmospheric pollution now, just wait and see what happens when we have to fall back on coal.

Please approve the Nantucket Sound Wind Farm.

Very truly yours,
Frank W. Hoch

Lisina M. Hoch ◊ Seven Gates Farm ◊ RFD 900 ◊ Vineyard Haven MA 02568

2999

January 26, 2005

U.S. Army Corps of Engineers
New England District
Cape Wind Energy EIS Project
696 Virginia Road
Concord MA 01742

Attention of Karen Kirk Adams

Gentlemen,

In response to your call for public opinions, I am writing in support of wind power and especially of the proposed Nantucket Sound Wind Farm. We desperately must get started on new sources of power production in our area and everywhere else.

The proposed Nantucket Sound Wind Farm must be built, the sooner, the better, to ease the severe atmospheric problems of the area, but also to provide power for the long term.

Please approve the Nantucket Sound Wind Farm.

Very truly yours,

Lisina M. Hoch

Northern
194 Lakeview Avenue, Falmouth, MA 02540

3000

January 19, 2005

TO WHOM IT MAY CONCERN:

RENEWABLE ENERGY IS NEEDED but not at the location of HORSESHOE SHOALS- Federal Government should have a policy pertaining to "off shore lands" Why is there no Alternative to this site? NO! TO Wind Farms on Horseshoe Shoals!! Please forward to Corps of Engineers! Thank U.

Sincerely, Cliff & Maureen Northern

RH-CASSIN (2)

I WAS 3001
PRESENT AT

A PRESENTATION

SPONSORED

AT AN

AMERICAN SOCIETY

OF MECHANICAL

ENGINEERS MEETING

ARRANGED BY

THE MECHANICAL

ENGINEERING

DEPARTMENT OF

THE UNIVERSITY

OF NEW HAMPSHIRE

DURHAM, N. H.

3001 (1)

2AM

SATURDAY

JAN 29, 2005

RH CASSIN

4 N. H. ST.

SEABROOK

N. H. 03874

KAREN KIRK-ADAMS

CAPE WIND ENERGY

EIS PROJECT

U.S. ARMY 3001

CORPS OF

ENGINEERS

NEW ENGLAND

DISTRICT

696 VIRGINIA

ROAD

CONCORD, MA.

01742-2751

SEEMS 3001 (4)

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Richard H. Gaus

48 Puritan Road
Buzzards Bay, MA 02532
January 27, 2005

3002

Dear Ms. Kirk-Adams,

I am strongly in favor of the proposed Nantucket Sound Windfarm. As the mother of two asthmatic children, I appreciate the lack of pollution. As a consumer of electricity, I very appreciate lower cost. The price I now pay for power is outrageous compared to the price I paid when I lived in Lincoln.

I have seen land-based windfarms and did not find them unsightly. I believe a windfarm set in Nantucket Sound would be visually pleasing.

Please, add my name to those who desire a non-polluting, cheaper, green source of energy.

Sincerely yours,
Margaret Shea

Jan. 27, 2005

3003

Dear Ms. Adams,

We wish to add our voices to the many on Nantucket who oppose an off-shore wind-farm off the Coast of Cape Cod. The Cape itself, and the Islands of Nantucket and Martha's Vineyard do not deserve the visual pollution of 130 turbines - with possibly more in the future. We have some of the most pristine vistas and landscapes in the country and these should not be despoiled. We are also concerned re: bird kills, as there are migratory bird routes over the Atlantic. In fact I enclose an article re. the terrible bird kills occuring in California - over a period

of 20 years!2.

We are also concerned re: the turbines possibly interfering with our air traffic and causing problems re passenger safety.

In closing we are environmentalists, who believe in the need for wind power, but only where appropriately sited — and that is not in Nantucket Sound.

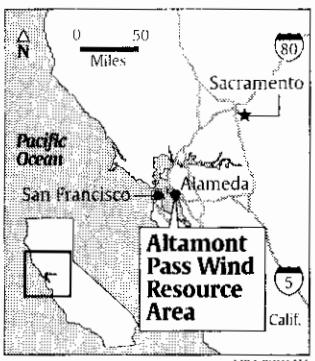
Sincerely,
Patricia & Owen Clinton
Nantucket, MA.

3003

Wind turbines taking toll on birds of prey

Thousands of deaths at site in Calif. spur group's lawsuit

By John Ritter
USA TODAY



USA TODAY

ALTAMONT PASS, Calif. — The big turbines that stretch for miles along these rolling, grassy hills have churned out clean, renewable electricity for two decades in one of the nation's first big wind-power projects.

But for just as long, massive fiberglass blades on the more than 4,000 windmills have been chopping up tens of thousands of birds that fly into them, including golden eagles, red-tailed hawks, burrowing owls and other raptors.

After years of study but little progress reducing bird kills, environmentalists have sued to force turbine owners to take tough corrective measures. The companies, at risk of federal prosecution, say they see the need to protect birds. "Once we finally realized that this issue was really serious, that we had to solve it to move forward, we got religion," says George Hardie, president of G3 Energy.

The size of the annual body count — conservatively put at 4,700 birds — is unique to this sprawling, 50-square-mile site in the Diablo Mountains between San Francisco and the agricultural Central Valley because it spans an international migratory bird route regulated by the federal government. The low mountains are home to the world's highest density of nesting golden eagles.

Scientists don't know whether the kills reduce overall bird populations but worry that turbines, added to other factors, could tip a species into decline. "They didn't realize it at the time, but it was just a really bad place to build a wind farm," says Grainger Hunt, an ecologist with the Peregrine Fund who has studied eagles at Altamont.

Across the USA — from Cape Cod to the Southern California desert — new wind projects, touted as emission-free options to oil- and gas-fueled power plants, face resistance over wildlife, noise and vistas. The clashes come as wind-energy demand is growing, in part because 17 states have passed

"We've been really clear all along, we absolutely support wind energy as long as facilities are appropriately sited," says Jeff Miller, Bay Area wildlands coordinator for the Center for Biological Diversity, which took 12 companies to court.

Wind energy is a tiny but fast-growing share of U.S. energy — 0.4%, up from less than 0.1% five years ago. Since November, when Congress reinstated a key tax credit for wind producers, the industry is poised to expand by as much as a third this year, the American Wind Energy Association says.

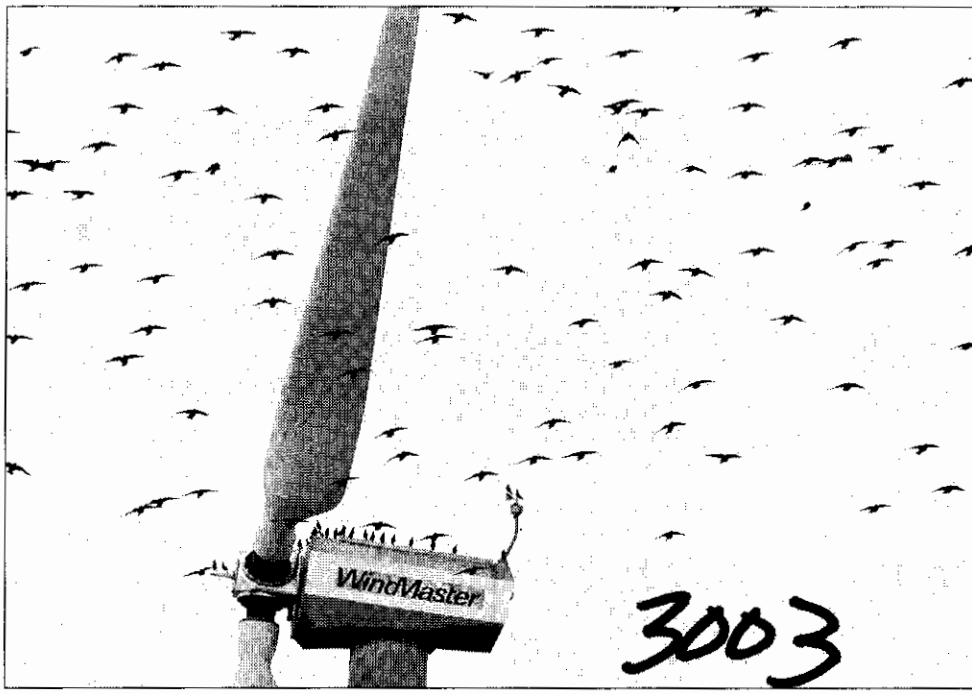
In 2004, wind generated enough electricity to power 1.6 million households, the association says. Altamont's turbines are the nation's No. 2 producer. Few energy experts think environmental concerns will discourage wind development long-term because the tradeoff is too appealing.

"When you opt for wind turbines, you don't opt for pollution that harms children and crops from fossil-fuel power plants," says Dan Kammen, an energy professor at the University of California-Berkeley.

But windmills — derisively dubbed by some "toilet brushes in the sky" — draw fire when they're planned in areas prized for their pristine landscapes:

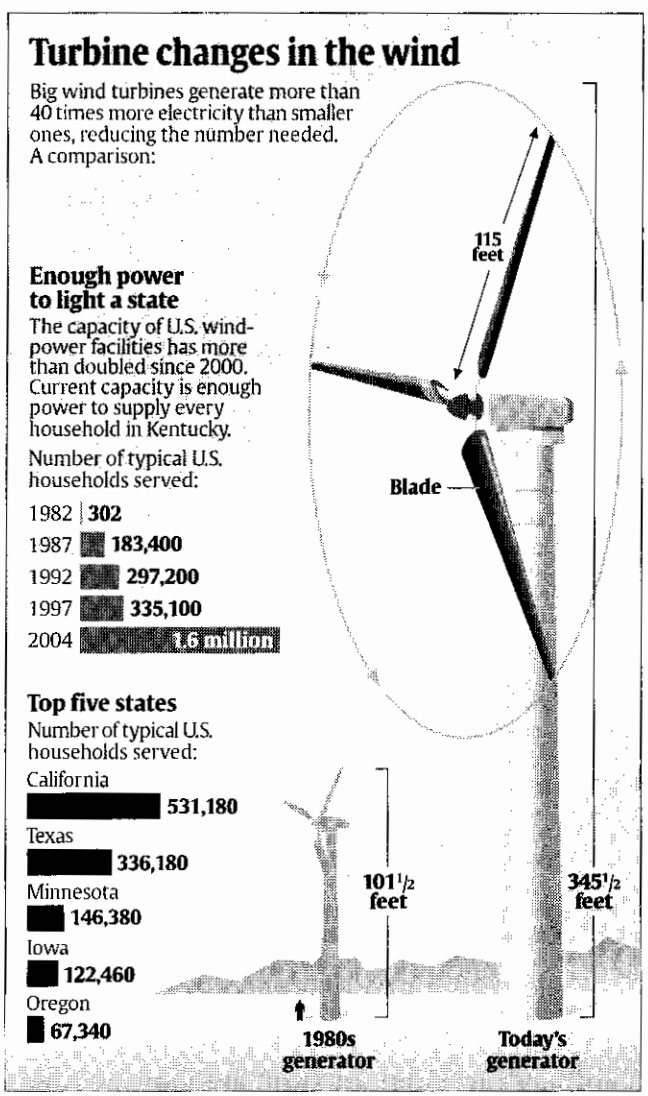
▶ Cape Cod groups are fighting what they call visual pollution from 130 turbines, each taller than the Statue of Liberty, sought for Nantucket Sound. Fishermen fear loss of prime fishing grounds from the USA's first offshore project.

▶ Rep. Nick Rahall, D-W.Va.,



By Martin Klimek for USA TODAY

Potential killer: A flock of birds flies past a non-operating wind turbine in the hills of Altamont Pass in Alameda County, Calif. Turbines in the area have killed eagles, hawks and owls.



Source: American Wind Energy Association; G3 Energy
By Karl Gelles, USA TODAY

▶ In the Flint Hills of Kansas, the Audubon Society worries that windmills could despoil views in one of America's few remaining stands of native tallgrass prairie and harm habitats of migrating prairie birds.

Ocean City and other sites.

Altamont Pass bird kills have been known for years, but turbine owners and federal regulators ignored them except to urge more research, says Miller of the Center for Biological Di-

renewal, and the U.S. Fish and Wildlife Service decided to crack down. "Twenty years has just been too long to resolve this problem," says Scott Heard, the agency's chief Northern California enforcement agent.

Fish and Wildlife can prosecute those responsible for kills under federal laws that protect eagles and migratory birds.

The center's lawsuit was withdrawn but filed again in November because the wind companies' bird-protection plan was "not a serious attempt," Miller says. The center is appealing Alameda County's approval of new permits.

The state study's key recommendation would be costly for companies: replace old turbines with fewer, larger-capacity modern ones, relocate them away from favorite bird haunts and build them more than twice as high so blades rotate above the birds' flight paths.

Environmentalists want 3-year permits that can be renewed only if companies show progress. The companies, citing financial pressures, have proposed at least 13-year permits and want their own timetable for installing new turbines.

Alameda County is trying to broker a deal. "We can't put them out of business by telling them to take out all their old turbines," says assistant planning director Steven Buckley.

Turbine owners say Altamont's 4,000-plus windmills are outdated and eventually will be replaced by 1,000 or fewer new ones. G3 Energy, a small Altamont operator, is replacing 180 obsolete turbines with 38 larger ones.

Others are more cautious. FPL Energy, Altamont's biggest operator with 2,000 turbines

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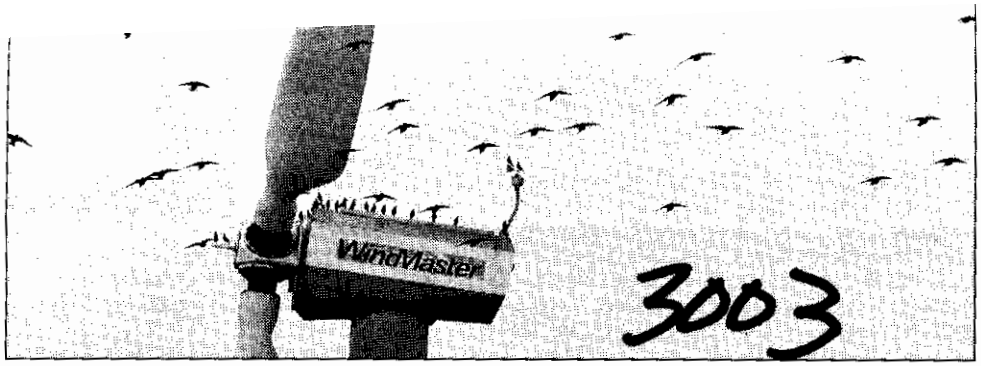
ur group's lawsuit



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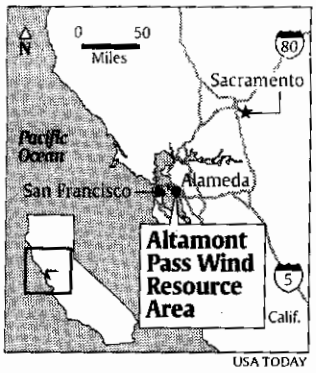

USA TODAY

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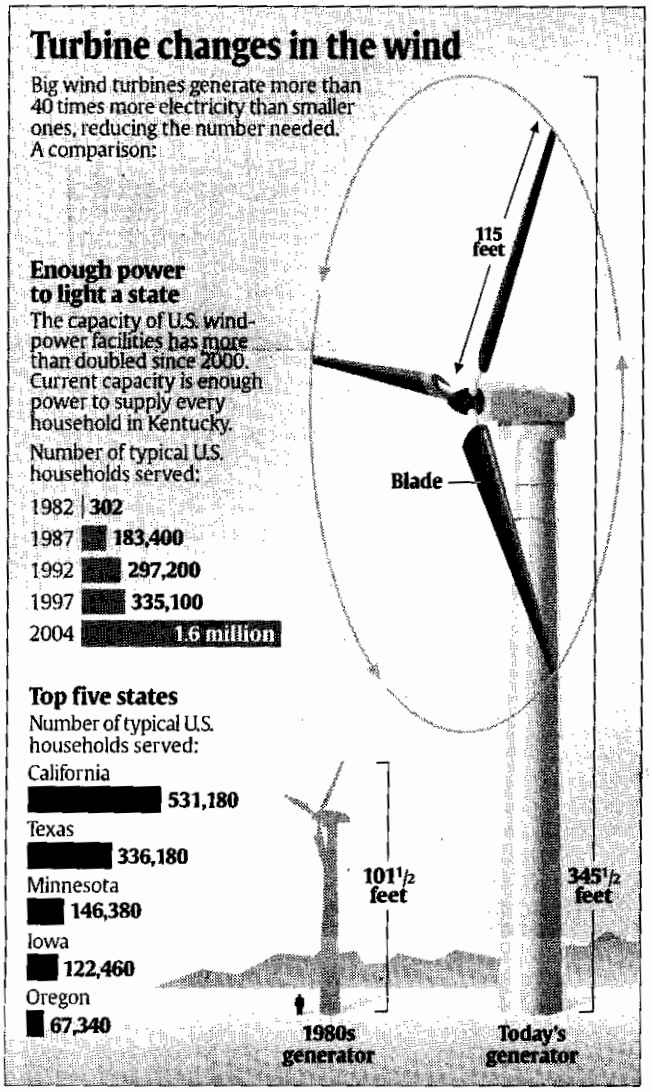
But windmills — derisively dubbed by some "toilet brushes in the sky" — draw fire when they're planned in areas prized for their pristine landscapes:

- Cape Cod groups are fighting what they call visual pollution from 130 turbines, each taller than the Statue of Liberty, sought for Nantucket Sound. Fishermen fear loss of prime fishing grounds from the USA's first offshore project.
- Rep. Nick Rahall, D-W.Va., asked the Government Accountability Office to study the effects more windmills would have in the Appalachians. Research found that existing turbines killed up to 4,000 bats on Backbone Mountain last year.



Source: American Wind Energy Association; G3 Energy

By Karl Gelles, USA TODAY

- In the Flint Hills of Kansas, the Audubon Society worries that windmills could despoil views in one of America's few remaining stands of native tallgrass prairie and harm habitats of migrating prairie birds.
- Acting Gov. Richard Codey last month ordered a 15-month wind-power moratorium on the New Jersey shore, where the desire to preserve Atlantic views has collided with plans for offshore turbines near Ocean City and other sites.

Altamont Pass bird kills have been known for years, but turbine owners and federal regulators ignored them except to urge more research, says Miller of the Center for Biological Diversity. But a California Energy Commission study in August found bird fatalities much higher than had been thought and laid out steps to limit them.

At the same time, 20-year-old county permits were up for renewal, and the U.S. Fish and Wildlife Service decided to crack down. "Twenty years has just been too long to resolve this problem," says Scott Heard, the agency's chief Northern California enforcement agent.

Fish and Wildlife can prosecute those responsible for kills under federal laws that protect eagles and migratory birds.

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Alameda County is trying to broker a deal. "We can't put them out of business by telling them to take out all their old turbines," says assistant planning director Steven Buckley.

Turbine owners say Altamont's 4,000-plus windmills are outdated and eventually will be replaced by 1,000 or fewer new ones. G3 Energy, a small Altamont operator, is replacing 180 obsolete turbines with 38 larger ones.

Others are more cautious. FPL Energy, Altamont's biggest operator with 2,000 turbines, wants the study's findings tested. "Certainly the turbine owners hope fewer, taller turbines reduce collisions," says FPL spokesman Steve Stengel. "But there has not been research done to verify that."

3004

United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240

JAN 25 2005

Ms. Amy McGuire Kates
P.O. Box 1090
Cotuit, Massachusetts 02635

Dear Ms. Kates:

Thank you for your comments on the Cape Wind Draft Environmental Impact Statement. The Department of the Interior's Minerals Management Service is a cooperating agency with the Army Corps of Engineers which has the lead on this project. We will forward your comments to the Army Corps of Engineers. Again, thank you for your interest and comments on the Cape Wind Draft Environmental Impact Statement.

Sincerely,

Gregory Gould
Chief, Environmental Division

TAKE PRIDE IN AMERICA

3004

Amy McGuire Kates

* P.O. Box 1090 * Cotuit, Massachusetts 02635 * (508) 420-0223 * FAX (508) 420-8732

November 30, 2004

Regarding.. **Save Our Sound**

The Army Corps of Engineers has released its report on the Cape Wind proposal to build a wind power plant in Nantucket Sound. A private consultant chosen and paid by Cape Wind largely wrote the report. Another consultant reviewing the research was also paid by Cape Wind. It is no surprise that the report was favorable.

This project, the worlds largest and the first US offshore wind plant, deserves a thoughtful and impartial review. This important document is roughly 4,000 pages. The public deserves more than 60 days to review the report and comment.

As you know, a private developer plans to take 24 square miles of public land (and perhaps even more if alternative sites are built) for free in the waters between Cape Cod and the Islands. This massive commercial project would be heavily subsidized by millions of your taxpayer dollars.

Our local economy, wildlife, boating and aviation safety, commercial and sport fishing, and the natural beauty of this area would all be affected by the industrialization of our offshore resources. By developing alternative energy responsibly and following a route of energy conservation, we can avoid trading off one environmental resource against another.

Please extend the public comment period on the Draft Environmental Impact Statement for the proposed Cape Wind project to 180 days. Any shorter time period is entirely insufficient to allow the public ample opportunity to provide input on such a lengthy and important document on a complex and controversial project.

Thank you for your prompt attention to this matter.

Sincerely,

Amy M. Kates

Amy McGuire Kates

Mail comments to: Karen Adams, Project Manager, Regulatory Division,
696 Virginia Road, Concord, MA 01742

3005

United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240

JAN 25 2005

Ms. Alexis Burns
87 Chuckles Way
Marstons Mills, Massachusetts 02648

Dear Ms. Burns:

Thank you for your comments on the Cape Wind Draft Environmental Impact Statement. The Department of the Interior's Minerals Management Service is a cooperating agency with the Army Corps of Engineers which has the lead on this project. We will forward your comments to the Army Corps of Engineers. Again, thank you for your interest and comments on the Cape Wind Draft Environmental Impact Statement.

Sincerely,

Gregory Gould
Chief, Environmental Division

Marstons Mills

3005

Alexis Burns
87 Chuckles Way
Marstons Mills, MA 02648

81901

November 24, 2004

I would like to register my objection to the Army Corps of Engineers' review of Cape Wind Associate, LLC's, proposal to industrialize 24 square miles of Nantucket Sound.

The massive project Cape Wind proposes is the first offshore wind energy project this country has faced. Currently, there are no federal laws that authorize the occupation of outer continental shelf lands by private developers or that regulate how and where such development is appropriate.

The federal government must first establish guidelines for the review of proposals such as Cape Wind's before any more development takes place. We must develop sensible standards that enable the appropriate federal agency to weigh the benefits of a proposed project against its costs, which potentially include harmful environmental impacts, negative effects on the affected region's economy and degradation of an area's aesthetic values,

These public resources belong to all of us, and it is imperative that sensible laws be passed before any projects are approved. Wealthy private developers should not determine how or where the outer continental shelf will be developed. Without an established process by which the Army Corps of Engineers, or any other federal agency, can objectively and competently review these proposals, any consideration of Cape Wind's proposed wind plant should cease.

Thank you for your consideration of this issue.

Sincerely,

Alexis Burns

Alexis Burns

3006

United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240

Ms. Cindy Lowry
Director, OPTI
233 Water Street, #1
Hallowell, Maine 04347

JAN 25 2005

Dear Ms. Lowry:

Thank you for your comments on the Cape Wind Draft Environmental Impact Statement. The Department of the Interior's Minerals Management Service is a cooperating agency with the Army Corps of Engineers which has the lead on this project. We will forward your comments to the Army Corps of Engineers. Again, thank you for your interest and comments on the Cape Wind Draft Environmental Impact Statement.

Sincerely,

Gregory Gould
Chief, Environmental Division

TAKE PRIDE IN AMERICA

3006

OCEANS PUBLIC TRUST INITIATIVE

OPTI

A PROJECT OF EARTH ISLAND INSTITUTE

December 9, 2004

Ms. R. M. Burton
Director, Minerals Management Service
1849 C Street, N. W.
Washington, D. C., 20240

Mr. Earl H. Stockdale
General Counsel for the
U.S. Department of the Army (Civil Works)
441 G Street, NW
Washington, DC 20314

Mr. Thomas L. Sansonetti
Assistant Attorney General
Environment/Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Ms. Burton, Mr. Sansonetti, and Mr. Stockdale:

I am writing to bring to your attention a report prepared by the Congressional Research Service (CRS) on the question of public trust property rights on the Outer Continental Shelf (OCS). See Attachment. By copy of this letter to Colonel Koning, I ask that this report and letter be included in the record of the Cape Wind DEIS proceeding.

On separate occasions, I have asked each of you, on behalf of the Oceans Public Trust Initiative (OPTI), whether the United States government considers a mere navigability permit under section 10 of the Rivers and Harbors Act sufficient to allow a private developer to use and occupy federal lands and waters on the OCS. I have also written to other officials with the Corps regarding this issue. As yet, I have not received a direct response to this question from any official with the federal government.

It is for this reason that I bring the report by the CRS to your attention. In the summary of the report, the author concludes that "there would appear to be no present mechanism for providing an applicant with the necessary property rights to begin construction." In the body of the report, the author also states, "It appears that no federal agency, including the Army Corps of Engineers, which permits structures only for navigability purposes, can authorize the occupation and use of OCS lands for wind and other renewable energy purposes under current law." CRS-12.

CINDY LOWRY, DIRECTOR • 233 WATER STREET #1 • HALLOWELL, MAINE 04347 • PH: 207.622.3587 • EMAIL: CINDYOCEANUS@AOL.COM

3006

In light of this analysis, OPTI again asks the federal government, in its capacity as trustee for the OCS to the benefit of the general public, the following question: "Will the United States protect the public trust interests in the OCS by advising the Cape Wind Associates that constructing its proposed offshore wind plant on the basis of a section 10 permit is illegal?" Alternatively, will the Army Corps of Engineers terminate its review of this, and all other section 10 permit applications for this purpose since such applications do not serve as a legally sufficient authorization for the proposed private activities?

I greatly appreciate your consideration of this critical issue and look forward to your response to these questions. These questions have gone unanswered for far too long. Thank you.

Sincerely,

Cindy Lowry

Cindy Lowry
Director, Oceans Public Trust Initiative

Cc: Governor Mitt Romney
Attorney General Thomas Reilly
Senator Edward Kennedy
Senator John Kerry
Congressman William Delahunt
Colonel Koning
Aaron M. Flynn, CRS

Order Code RL32658

3006

CRS Report for Congress

Wind Energy: Offshore Permitting

November 1, 2004

Aaron M. Flynn
Legislative Attorney
American Law Division

Wind Energy: Offshore Permitting

3006

Summary

Technological advancements and tax incentives have driven a global expansion in the development of renewable energy resources. Wind energy, in particular, is now often cited as the fastest growing commercial energy source in the world. Currently all U.S. wind energy facilities are based on land; however, multiple offshore projects have ben proposed and are moving through the permitting process.

It would seem relatively clear that the United States has the authority to permit and regulate offshore wind energy development within the zones of the ocean under its jurisdiction. The federal government and coastal states each have roles in the permitting process, the extent of which depends on whether the project is located in state or federal waters. Currently, no single federal agency is responsible for permitting activities on the submerged lands in federal waters, with regulatory authority allocated among various agencies based on the nature of the resource to be exploited. In addition to basic jurisdictional questions, it is not necessarily clear that current federal law should be interpreted to apply to offshore wind energy facilities or whether new laws will be needed.

The Army Corps of Engineers (Corps) has been exercising jurisdiction under the Rivers and Harbors Act and the Outer Continental Shelf Lands Act. Recently, in *Alliance to Protect Nantucket Sound v. United States Department of the Army*, a federal district court held that the Corps' jurisdiction under these laws was legally sound and upheld the Corps' decision to permit a preliminary data collection tower in federal waters. The reasoning of the court may be applied to the permitting of the larger-scale wind energy project itself, although the decision has been appealed and certain issues remain unresolved. Currently, it is arguable whether the Army Corps' jurisdiction extends to renewable energy projects in federal waters, and there would appear to be no present mechanism for providing an applicant with the necessary property rights to begin construction.

Several bills have been introduced in the 108th Congresses to address this issue, offering two distinct approaches to regulation. H.R. 793 would place authority for granting easements and rights-of-way on submerged federal lands in the hands of the Secretary of the Department of the Interior. Several versions of the Energy Policy Act of 2003, H.R. 6, and S. 2095, contain similar provisions. On the other hand, H.R. 1183 would place regulatory authority in the Secretary of the Department of Commerce by amending the Coastal Zone Management Act to allow specifically for renewable energy projects and the designation of ocean areas that would make suitable candidates for development.

This report will discuss the current law applicable to siting offshore wind facilities, the recent court challenges to the federal offshore permitting process, and the above-mentioned legislation that addresses offshore wind energy regulation. This report will be updated as events warrant.

3006

Contents

3806

Wind Energy: Offshore Permitting

Technological advancements and tax incentives have driven a global expansion in the development of renewable energy resources. Wind energy, in particular, is now often cited as the fastest growing commercial energy source in the world.[1] Currently, unlike much of Europe,[2] all wind power facilities in the United States are based on land; however, multiple offshore projects have now been proposed, including the Cape Wind project off the coast of Massachusetts and Winergy's proposals off the coasts of Massachusetts, New York, New Jersey, Delaware, Maryland, and Virginia.[3] These projects are relatively large undertakings requiring substantial investment; proposed wind farms off the coast of Massachusetts, consisting of approximately 170 turbines, are estimated to cost between $500 million and $700 million.[4]

There are multiple policy questions related to the feasibility and relative attractiveness of developing wind energy; however, the focus of this report is the current law applicable to siting offshore wind facilities, including the interplay between state and federal jurisdictional authorities. This report will also discuss the recent court challenges to the federal offshore permitting process and recent legislation that would address offshore wind energy regulation. This report will be updated as events warrant.

Ocean Jurisdiction. The jurisdiction of coastal nations over the world's oceans extends across various adjoining zones by operation of international conventions and by the domestic laws and proclamations of individual governments. Jurisdiction over U.S. waters is divided into four functional areas:, the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone, and state-controlled waters. The federal government has differing levels of authority in each of these zones, vis-a-vis the states and vis-a-vis other nations. Even within these U.S. zones, all nations enjoy freedom of navigation and overflight as well as other internationally lawful uses of the sea, subject to the regulatory jurisdiction granted the coastal state

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[1] *See* U.S. DEP'T OF ENERGY & U.S. DEP'T OF THE INTERIOR, WHITE HOUSE REPORT IN RESPONSE TO THE NATIONAL ENERGY POLICY RECOMMENDATIONS TO INCREASE RENEWABLE ENERGY PRODUCTION ON FEDERAL LANDS at 6 (Aug. 2002).

[2] For an overview of offshore wind farm regulation in the United Kingdom, *see*, Nathanael D. Hartland, *The Wind and the Waves: Regulatory Uncertainty and Offshore Wind Power in the United States and United Kingdom*, 24 U. PA. J. INT'L ECON. L. 691 (2003).

[3] Betsie Blumberg, *Wind Farms: An Emerging Dilemma for East Coast National Parks*, *in* NATIONAL PARK SERVICE, NATURAL RESOURCE YEAR IN REVIEW–2003 63 (March 2004).

[4] Testimony of Attorney General Thomas F. Reilly, Subcommittee on Energy and Mineral Resources, Hearing Regarding HR 793, 108th Cong. (March 6, 2003) (*available at* [http://resourcescommittee.house.gov/108cong/energy/2003mar06/reilly.htm]).

3006

over such things as setting optimum fishing allowances.[5] It would seem relatively clear, however, that, generally, the United States would have sufficient jurisdiction over each of its zones to authorize the construction and operation of offshore wind projects.

U.S. authority as against other nations begins at its coast — called the baseline — and extends 200 nautical miles out to sea. The first twelve nautical miles comprise the U.S. territorial sea.[6] Under the 1982 United Nations Convention on the Law of the Sea[7] (UNCLOS III), a coastal nation may claim sovereignty over the air space, water seabed, and subsoil within its territorial sea.[8] U.S. Supreme Court precedent and international practice indicate that this sovereignty authorizes coastal nations to permit offshore development within its territorial sea.[9]

The U.S. contiguous zone extends beyond the territorial sea to twenty-four nautical miles from the baseline. In this area, a coastal nation may regulate to protect its territorial sea and to enforce its customs, fiscal, immigration, and sanitary laws.[10] The exact contours of U.S. authority in the contiguous zone are not clearly defined, although the U.S. does not claim full sovereignty.[11] However, in addition to the jurisdiction specifically applicable to the contiguous zone, the jurisdiction the United States exercises over the EEZ is also applicable.

The U.S. EEZ extends 200 nautical miles from the baseline. In accordance with international law, the U.S. has claimed sovereign rights to explore, exploit, conserve, and manage EEZ natural resources of the sea-bed, subsoil, and the superadjacent waters.[12] U.S. jurisdiction also extends over "other activities for the economic exploitation and exploration of the zone, *such as the production of energy from the water, currents and winds*"[13] and, subject to some limitations, "the establishment and use of artificial islands, installations and structures; marine scientific research; and

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[5] Restatement (Third) of the Foreign Relations Law of the United States, § 514 (1986).

[6] Proc. No. 5928 (Dec. 27, 1988).

[7] United Nations Convention on the Law of the Sea, Dec. 10, 1982, 21 I.L.M. 1261 (entered into force Nov. 16, 1994)(hereinafter UNCLOS III).

[8] UNCLOS III arts. 2.1, 2.2, 3; *see also* United States v. California, 332 U.S. 19 (1947); Alabama v. Texas, 347 U.S. 272, 273-74 (1954).

[9] *See* United States v. California, 436 U.S. 32, 36 (1978); United States v. Alaska, 422 U.S. 184, 199 (1975); Alabama v. Texas, 347 U.S. 272, 273-74 (1954); United States v. California, 332 U.S. 19 (1947).

[10] UNCLOS III art. 33.

[11] United States v. De Leon, 270 F.3d 90, 91 n.1 (1st Cir. 2001); *see also* Vermilya-Brown Co. v. Connell, 335 U.S. 377, 381 (1948); Cuban Am. Bar Ass'n v. Christopher, 43 F.3d 1412, 1425 (11th Cir.1995) (control and jurisdiction is not equivalent to sovereignty).

[12] UNCLOS III arts. 56, 58.

[13] *Id.* art. 56.1 (emphasis added).

3006

the protection and preservation of the marine environment."[14] In almost all situations, the U.S. EEZ overlaps geographically with the Outer Continental Shelf (OCS), a geologically distinct area of appurtenant seabed referenced in several federal laws.[15]

Thus, it would seem clear that as against other nations, the United States would have legal authority to permit wind energy projects within the full range of its territorial sea, contiguous zone, and EEZ.

The relative jurisdiction of the federal government and the states is also of importance. The Submerged Lands Act of 1953[16] assured coastal states title to the lands beneath coastal waters in an area stretching, in general, three geographical miles from the shore.[17] Thus states, subject to federal regulation for "commerce, navigation, national defense, and international affairs" and the power of the federal government to preempt state law, may regulate the coastal waters within this area.[18] The remaining outer portions of waters over which the United States exercises jurisdiction are federal waters.[19]

In sum, it would seem relatively clear that the U.S. federal government would have permitting authority, supported by international law, for offshore wind farms. However, federal authority would be limited by the internationally recognized right of free passage and by the jurisdiction granted to the states under the Submerged Lands Act.

Federal and State Permitting. For *onshore* wind projects on federal public lands, the Department of the Interior, through the Bureau of Land Management, has created a comprehensive regulatory program under the Federal Land Policy and Management Act,[20] but no similarly comprehensive federal statutory or regulatory scheme exists for *offshore* wind energy development at this time. Still, the Army Corps of Engineers has undertaken the lead role in the federal permitting process, although some have questioned the Corps' statutory authority to issue permits for wind energy facilities. States may also play a role in the permitting process in some

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[14] *Id.* art. 56.1(b).

[15] *See* U.S. Commission on Ocean Policy, An Ocean Blueprint for the 21st Century: Final Report of the U.S. Commission on Ocean Policy, Primer on Ocean Jurisdictions: Drawing Lines in the Water, Pre-Publication Copy 41-44 (2004), *available at* [http://www.oceancommission.gov/documents/prepub_report/primer.pdf].

[16] 43 U.S.C. §§ 1301-1303, 1311-1315.

[17] *Id.* § 1301(a)(2). State jurisdiction typically extends three nautical miles (approximately 3.3 miles) seaward of the coast or "baseline." Texas and the Gulf coast of Florida have jurisdiction over an area extending 3 "marine leagues" (9 nautical miles) from the baseline. Louisiana's jurisdiction extends 3 "imperial nautical miles" (imperial nautical mile = 6080.2 feet) seaward of the baseline. 43 U.S.C. § 1301(a)(2).

[18] *Id.* §§ 1314(a), 1311(a)(2).

[19] *Id.* § 1302.

[20] 43 U.S.C. §§ 1701 *et. seq.*

3006

instances, although their jurisdiction is more limited with regard to offshore projects located in federal waters. The following paragraphs will describe the nature of the permitting process as it is currently being implemented and the challenges to existing Corps practice.

Federal Regulation. Currently, the Army Corp of Engineers has taken the lead role in the federal permitting process, claiming jurisdiction under the Rivers and Harbors Act (RHA),[21] as amended by the Outer Continental Shelf Lands Act (OCSLA).[22] The Corps has jurisdiction under these laws to regulate obstructions to navigation within the "navigable waters of the United States"[23] and, under what are arguably more limited circumstances, on the Outer Continental Shelf — thus the Corps has authority over structures in state and federal navigable waters. No federal legislation explicitly addresses the permitting of offshore renewable energy facilities, and the Corps position is based on what some argue is an overly broad interpretation of its statutory authority. In addition to the Corps' review for navigability-related purposes, the views of other federal agencies that have jurisdiction by law or special subject matter expertise, along with the views of state and local agencies, are taken into consideration during the environmental review process mandated by the National Environmental Policy Act (NEPA).[24]

NEPA requires federal agencies to take a "hard look" at the environmental consequences of their actions. In general, NEPA and its implementing regulations require various levels of environmental analysis depending on the circumstances and the type of federal action contemplated. Certain actions that have been determined to have little or no environmental effect are exempted from preparation of NEPA documents entirely and are commonly referred to as "categorical exclusions."[25] In situations where a categorical exclusion does not apply, an intermediate level of review, an environmental assessment (EA), may be required. If, based on the EA, the agency finds that an action will not have a significant effect on the environment, the agency issues a "finding of no significant impact" (FONSI), thus terminating the NEPA review process. On the other hand, major federal actions that are found to significantly affect the environment require the preparation of an environmental impact statement (EIS), a document containing detailed analysis of the project as proposed, as well as other options, including taking no action at all. NEPA does not

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[21] 33 U.S.C. §§ 407-687.

[22] 43 U.S.C. §§ 1331-1356a.

[23] Corps regulations define the "navigable waters of the United States" as "those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce." 33 C.F.R. § 329.4. Under the RHA, navigable waters "includes only those ocean and coastal waters that can be found up to three geographic miles seaward of the coast." Alliance To Protect Nantucket Sound, Inc. v. U.S. Dept. of Army 288 F.Supp.2d 64, 72 (D.Mass.,2003); *see also* 33 C.F.R. § 329.12(a). On the OCS, however, the Corps' regulatory jurisdiction extends beyond that three-mile limit for, at least certain purposes. 43 U.S.C. § 1333(a)(1), (e).

[24] 42 U.S.C. §§ 4321 *et. seq.*

[25] 40 C.F.R. § 1508.4 (2003).

direct an agency to choose any particular course of action; the only purpose of an EIS is to ensure that environmental consequences are considered. Thus, in practice, NEPA review will provide information on wind energy projects beyond mere impacts on navigability, and will include impacts to:

> existing resources of the final alternative sites in terms of physical oceanography and geology; wildlife, avian, shellfish, finfish and benthic habitat; aesthetics, cultural resources, socioeconomic conditions, and air and water quality. Human uses such as boating and fishing will also be described.[26]

In addition to the role interested parties and cooperating agencies may play under NEPA, certain federal agencies have independent sources of jurisdiction over specific ocean resources. Thus, they would also likely be involved in the permitting of offshore wind energy facilities. Some of the most relevant authorities are the Endangered Species Act (ESA)[27] and the Migratory Bird Treaty Act (MBTA).[28]

Briefly, each of these laws makes it illegal to inflict certain kinds of harm upon designated species of plants and animals. The ESA prohibits any person, including private entities, from "taking" a "listed" species.[29] "Take" is broadly defined as "to

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[26] *See* U.S. ARMY CORPS OF ENG'RS, ENVIRONMENTAL IMPACT STATEMENT: SCOPE OF WORK, WIND POWER FACILITY PROPOSED BY CAPE WIND ASSOCIATES, LLC 3, *available at* [http://www.nae.usace.army.mil/projects/ma/ccwf/windscope.pdf] (last visited Feb. 20, 2004).

[27] 16 U.S.C. §§ 1531-1544. It should also be noted that it is perhaps arguable that the ESA does not apply in certain U.S. waters or extraterritorially. However, section 9, which prohibits the taking of listed species, specifically states that it applies in the U.S. territorial sea and upon the high seas (i.e. areas beyond national jurisdiction). 16 U.S.C. § 1538(a)(1)(A), (C). So far, all U.S. wind farm proposals have been within the boundaries of the U.S. territorial sea and would thus appear to be covered by section 9. The section 7 consultation provision described above does not appear to expressly address applicability in U.S. waters or extraterritorially; however, the law states that it applies, to "any action authorized, funded, or carried out" by a federal agency, and regulations implementing section 7 make clear that consultation is required for actions taken within the United States and on the high seas. 16 U.S.C. § 1536; 50 C.F.R. § 402.01. The extent to which the phrase "within the United States" includes portions of the ocean under U.S. sovereignty or control is unclear; however, it may arguably include the territorial sea, over which the U.S. exercises full sovereignty. The application of the ESA in areas under the jurisdiction of other nations would be more questionable but is beyond the scope of this report. *See* Lujan v. Defenders of Wildlife, 504 U.S. 555, 589 (1992) (Stevens, J., concurring). In addition to ESA language pertaining to jurisdiction, the OCSLA does state that "[t]he Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations ... to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State....," lending credence to the idea that the ESA will apply in U.S. waters. 43 U.S.C. § 1333(a)(1).

[28] 16 U.S.C. §§ 703-712.

[29] Under the ESA, species are listed as either "endangered" or "threatened" based on the risk of their extinction. An "endangered" species is "any species which is in danger of extinction

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3006

harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct."[30] Additionally, a federal agency permitting or undertaking action that could impact a protected species is subject to section 7 of the ESA, which requires consultation with the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS or NOAA Fisheries), depending upon the species affected.[31]

The section 7 consultation process involves several initial steps leading to a determination of whether a listed species or its designated critical habitat is present in a project area.[32] If a species or critical habitat is present, then the permitting/acting federal agency must prepare a biological assessment, evaluating the potential effects of the action.[33] If the acting federal agency determines that a project may adversely affect a listed species or critical habitat, formal consultation and preparation of a biological opinion is required.[34] The biological opinion contains a detailed analysis of the effects of the agency action and contains the final determination as to whether the proposed action is likely to jeopardize the species or destroy or adversely modify its critical habitat.[35] If review results in a jeopardy or adverse modification determination, the biological opinion must identify any "reasonable and prudent alternatives" that could allow the project to proceed.[36] Projects that will result in a level of injury to a species or habitat that will fall short of jeopardizing survival may still be approved subject to certain terms.[37] The agency may be allowed to "take" some individuals of a listed species without triggering penalties under the act. These incidental takings are to be described in a statement accompanying the biological opinion.[38] Takings allowed under the consultation process are deemed consistent

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[29] (...continued)
throughout all or a significant portion of its range ...." A "threatened" species is "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." 16 U.S.C. §§ 1532(6), (20).

[30] 16 U.S.C. § 1532(19).

[31] *Id.* § 1536(2).

[32] 50 C.F.R. § 402.12(c) (2004). It should also be noted that some protections also attach to "candidate" species, i.e. those proposed but not officially listed. Under current law, an agency must "confer" with the appropriate Secretary if agency action will likely jeopardize the continued existence of any candidate species or adversely modify critical habitat proposed for designation. This is distinct from the section 7 consultation process, less formal, and meant to assist planning early in the process should the species be listed and more definite protections attach. *See* 16 U.S.C. § 1536(a)(4); 50 C.F.R. § 402.10.

[33] 50 C.F.R. § 402.12(b), (d) (2004).

[34] *Id.* § 402.14(e).

[35] *Id.* § 402.14(h).

[36] *Id.* § 402.14(h)(3).

[37] *Id.* § 402.14(i).

[38] *Id.* § 402.14(i)(1)(i)-(v).

3006

with the ESA and, thus, are not subject to the penalties under the act and no other authorization or permit is required.[39]

The MBTA is the domestic law that implements the United States' obligations under separate treaties with Canada, Japan, Mexico and Russia for the protection of migratory birds.[40] The MBTA generally prohibits the taking, killing, possession, transportation, and trafficking in of migratory birds, their eggs, parts, and nests.[41] Like the ESA, the general ban on taking protected birds can be waived under certain circumstances. Pursuant to section 704, the Secretary of the Interior is authorized to determine if, and by what means, the take of migratory birds should be allowed.[42] FWS is responsible for permitting activities that would otherwise violate the MBTA. Its regulations at 50 C.F.R. § 21 make exceptions from permitting requirements for various purposes and provide for several specific types of permits, such as import and export permits, banding and marking permits, and scientific collection permits.[43] More general permits for special uses are also provided for under the regulations, although an applicant must make "a sufficient showing of benefit to the migratory bird resource, important research reasons, reasons of human concern for individual birds, or other compelling justification."[44] It would not appear that FWS has promulgated regulations specific to the sort of unintentional harm caused by the rotating turbines of wind energy projects, thus it is not clear that the permitting process provided for under current regulations is immediately applicable to wind energy projects.[45] The Service has, however, adopted voluntary, interim guidelines for minimizing the wildlife impacts from wind energy turbines.[46] As these guidelines indicate, compliance does not shield a company from prosecution for MBTA violations; however, "the Office of Law Enforcement and Department of Justice have used enforcement and prosecutorial discretion in the past regarding individuals, companies, or agencies who have made good faith efforts to avoid the take of migratory birds."[47]

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[39] 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i)(5).

[40] Birds that receive protection under the MBTA are listed at 50 C.F.R. 10.13 (2003).

[41] 16 U.S.C. § 703.

[42] 16 U.S.C. § 704.

[43] 50 C.F.R. §§ 21.11-21.26 (2003).

[44] *Id.* § 21.27.

[45] *See* 69 Fed. Reg. 31074 (June 2, 2004) ("Current regulations authorize permits for take of migratory birds for activities such as scientific research, education, and depredation control. However, these regulations do not expressly address the issuance of permits for incidental take.").

[46] U.S. Fish and Wildlife Service, Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines, (May 2003) (*available at* [http://www.fws.gov/r9dhcbfa/wind.pdf].

[47] U.S. Fish and Wildlife Service, Memorandum, Service Interim Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines at 2 (May 2003).

3006

State Regulation. States may also play a regulatory role, whether the project is proposed for construction in federal or state waters. State jurisdiction over projects located in federal areas is substantially circumscribed; however, under the Coastal Zone Management Act[48] (CZMA) states are explicitly granted some regulatory authority. In general, the CZMA encourages states to enact coastal zone management plans to coordinate protection of habitats and resources in coastal waters.[49] The act establishes a policy of preservation alongside sustainable use and development that is compatible with resource protection.[50] Under the act, state coastal zone management programs that are approved by the Secretary of Commerce receive federal monetary and technical assistance. State programs must designate land and water conservation measures and permissible uses,[51] and must address various sources of water pollution.[52] Of particular importance here, the CZMA also requires that the federal government and federally permitted activities comply with state programs.[53] Responding to a Supreme Court decision that excluded OCS oil and gas leasing from state review under the CZMA, Congress amended the "consistency review" provision to include the impacts on a state coastal zone from federal actions in federal waters.[54] Thus, states have some authority to assure themselves that federally-permitted projects in federal waters will not result in a violation of state coastal zone management regulation.

In addition to consistency review, projects to be constructed in state waters, including any cables that would be necessary to transmit power back to shore, are subject to all state regulation or permitting requirements. Coastal zone regulation varies significantly among the states. The CZMA itself establishes three generally acceptable frameworks: (1) "[s]tate establishment of criteria and standards for local implementation, subject to administrative review and enforcement;" (2) "[d]irect State land and water use planning and regulation;" and (3) regulation development and implementation by local agencies, with state-level review of program decisions.[55]

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[48] 16 U.S.C. §§ 1451-1464.

[49] Coastal U.S. states and territories, including the Great Lakes states are eligible to receive federal assistance for their coastal zone management programs. Currently, there are 33 approved state and territorial plans. Of eligible states, only Illinois does not have an approved program. *See* National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, State and Territory Coastal Management Program Summaries, *available at* [http://www.ocrm.nos.noaa.gov/czm/czmsitelist.html].

[50] *Id.* § 1452(1), (2).

[51] *Id.* § 1455(d)(2), (9)-(12).

[52] *Id.* § 1455(d)(16).

[53] *Id.* § 1456(c).

[54] *Id*; Sec'y of the Interior v. California, 464 U.S. 312, 315 (1984).

[55] 16 U.S.C. § 1455(d)(11).

3006

Within this framework, several states, such as New Jersey, California, and Rhode Island, centralize authority for their programs in one agency.[56] In New Jersey, for instance, the state Department of Environmental Protection (through the Coastal Management Office within the Commissioner's Office of Policy, Planning, and Science) is the lead agency for coastal zone management under several state laws.[57] The majority of states, however, operate coastal zone management programs under "networks" of parallel agencies, with various roles defined by policy guidance and memoranda of understanding.[58] In Massachusetts, for instance, coastal zone management is tended to by a variety of agencies, including the Departments of Environmental Protection, Environmental Management, Fisheries and Wildlife, and Food and Agriculture, the Metropolitan District Commission, the Energy Facilities Siting Board, and the Executive Office of Transportation and Construction.[59] Based on a series of MOUs, each agency is obligated to issue and apply state regulations and permits consistently with the state's coastal zone management program.[60] Thus, depending on the state with jurisdiction, offshore wind energy projects can be subject to comprehensive regulation with permitting authority located within multiple state and local level agencies.

Corps Regulation Challenge. The authority of the Army Corps of Engineers to permit offshore wind energy projects has already been challenged in court in *Alliance to Protect Nantucket Sound v. United States Department of the Army*.[61] The case deals with the two primary obstacles to the current federal system applied to offshore wind energy permitting: (1) the limits of Corps jurisdiction on the outer continental shelf and (2) the current lack of administrative authority to convey OCS property rights for renewable energy.[62] In September 2003, a Massachusetts district court granted summary judgment in favor of the Army Corps interpretation, at least with respect to construction of an initial data gathering tower, although it would appear that its reasoning would be applicable to the larger-scale wind farm project itself. At present, the case is on appeal with the United States Court of

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[56] *See* Rusty Russell, *Neither Out Far Nor In Deep: The Prospects for Utility-Scale Wind Power in the Coastal Zone*, 31 B.C. ENVTL. AFF. L. REV. 221, 240-41 (2004).

[57] E.g. Freshwater Wetlands Protection Act N.J.S.A. 13:9B; Flood Hazard Area Control Act, N.J.S.A. 58:16A; Wetlands Act of 1970, N.J.S.A. 13:9A; Waterfront Development Act, N.J.S.A. 12:5-3; NJ Water Pollution Control Act - N.J.S.A. 58:10A; Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19; Tidelands Act, N.J.S.A. 12:3.

[58] Rusty Russell, *supra* note 23, at 241.

[59] MASSACHUSETTS OFFICE OF COASTAL ZONE MGMT., MASSACHUSETTS COASTAL ZONE MANAGEMENT PLAN 113-121 (Mar. 2002), *available at* [http://www.state.ma.us/czm/managementplan.pdf].

[60] *Id.* at App. E.

[61] Alliance to Protect Nantucket Sound v. United States Department of the Army, 288 F.Supp.2d 64 (D. Mass. 2003).

[62] *Id.* at 67. Additional arguments were also presented regarding the adequacy of the Corps' NEPA analysis.

3006

Appeals for the First Circuit.[63] The following paragraphs discuss the generally applicable jurisdiction concerns as well as the interpretation accepted in the *Alliance* case.

Corps OCS Jurisdiction. The first major issue facing offshore wind energy projects is the applicability of the Rivers and Harbors Act and the Outer Continental Shelf Lands Act to these projects. Section 10 of the Rivers and Harbors Act authorizes the Army Corps to review and permit any project that would obstruct the "navigable waters of the United States."[64] Under this law, as interpreted by the Corps, jurisdiction is limited to state-controlled waters.[65] Thus, it would seem relatively clear that the Corps has permitting jurisdiction under the Rivers and Harbors Act for any wind energy project that would be sited in state-controlled portions of the territorial sea. The OCSLA extends the Corps' jurisdiction to the OCS, although it is arguable that renewable energy projects to be sited in federal waters are beyond the scope of the Corps' extended jurisdiction. In general, the OCSLA authorizes the Department of the Interior to lease certain mineral resources of the submerged lands in federal waters.[66] Leasing of the seabed can thus only occur for specified purposes. 43 U.S.C. § 1333(e) of the OCSLA extends Corp navigability permit jurisdiction to the OCS. It states:

> The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is extended to the artificial islands, installations, and other devices referred to in subsection (a) of this section.[67]

43 U.S.C. § 1333(a), referenced in (e) states, in relevant part:

> The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, *which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom*, or any such installation or other device (other than a ship or vessel) for the purpose of *transporting* such resources ....[68]

The meaning of this section is subject to differing interpretations. Arguably, the language of these provisions indicates that Corps permitting authority on the OCS is limited to those structures that might be built and used for the purpose of exploring for, developing, producing, or transporting the resources that have been extracted from the seabed. Such an interpretation would appear to exclude wind energy

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[63] *See* Appellants' Designation of the Contents of the Appendix and Statement of Issues, Alliance to Protect Nantucket Sound, Inc. v. U.S. Dep't of the Army, 288 F. Supp. 2d 64 (D. Mass. 2003), appeal docketed, No. 03-2604 (1st Cir. Nov. 24, 2003).

[64] 33 U.S.C. § 403.

[65] 33 C.F.R. § 329.12.

[66] *See generally* 43 U.S.C. § 1337.

[67] 43 U.S.C. § 1333(e).

[68] 43 U.S.C. § 1333(a)(1).

3006

facilities from the Corps' authority. On the other hand, the court in the *Alliance* case found significance in the use of the word "may," holding that Corp jurisdiction extends to all structures that *may or may not* be used to explore for, develop, or produce resources.[69] It is arguable, however, that the phrase "may be" implies only that construction may or may not occur and does not indicate that the designated purposes are optional. Thus, the language of the statute can be read so as to deny Corps jurisdiction over offshore renewable energy projects; however, OCSLA legislative history and agency interpretation indicate that Congress did not intend to limit the Corps' authority to structures used for mineral exploration, development, extraction, or transportation, as discussed below.

Army Corps regulations do not explicitly address the extent of its authority on the OCS. They do recognize that Corps jurisdiction over the OCS is based on the OCSLA, stating that Corps jurisdiction has been extended to "artificial islands, installations, and other devices located on the seabed, to the seaward limit of the outer continental shelf...."[70] Notably, unlike the OCSLA itself, this provision does not make reference to the purpose for which these structures are used, arguably indicating that the Corps interprets its jurisdiction broadly. Additionally, Guidance Letter 88-08, a Corps policy statement and not itself enforceable law, interprets the legislative history of the OCSLA to indicate that Congress intended that the Corps regulate all OCS structures regardless of the purpose served, including even such things as offshore gambling casinos.[71] The Letter does not provide the analysis leading up to this conclusion; however, the court in the *Alliance* case relied heavily on the statute's legislative history in upholding the Corps interpretation, according the Corps deference under the *Chevron* standard.[72]

As originally enacted, the OCSLA provided that the jurisdiction of the Corps "extended to artificial islands and fixed structures located on the outer Continental

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[69] Alliance to Protect Nantucket Sound v. United States Department of the Army, 288 F. Supp.2d 64, 75 (D. Mass. 2003).

[70] 33 C.F.R. § 320.2(b).

[71] Army Corps of Engineers, Regulatory Guidance Letter 88-08 (July 20, 1988), *available at* [http://www.usace.army.mil/inet/functions/cw/cecwo/reg/rgls/rgl88-08.htm]. Guidance Letter 88-08 was set to expire in 1990; however, the Corps indicates that unless superseded by subsequently issued regulations or guidance letters, "the guidance provided in RGL's generally remains valid after the expiration date." *See* Army Corps of Engineers, Regulatory Guidance Letters, *at* [http://www.usace.army.mil/inet/functions/cw/cecwo/reg/rglsindx.htm]. Regulations and subsequent guidance letters do not appear to address or revise the Corps position contained in the 1988 opinion.

[72] As established in *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, an agency's interpretation of a statute it is charged with administering it is entitled to special deference. If Congressional intent is not clear from the face of a statute, agency interpretation is generally upheld so long as it is reasonable. Chevron, 467 U.S. at 842-45 (1984). If Congressional intent is clear from the face of the statute, "the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id.* at 843.

3006

Shelf," making no explicit reference to the purpose of such structures.[73] The provision was subsequently amended, taking on its current form so as to reference the resource development purposes of OCS structures. However, as the legislative history indicates, at the time of the amendment, Congress understood the Corps' jurisdiction under the OCSLA to apply to all artificial islands and fixed structures on the OCS, regardless of purpose.[74] Further, the conference report indicates that Congress did not intend to limit the Corps' jurisdiction in this respect, but rather to conform the section to other amended provisions.[75]

Use of the OCS. An additional issue relevant to the construction of offshore wind facilities is the matter of who is authorized to use the federally-controlled submerged lands of the OCS. Because any wind turbines would be attached to the seabed of the OCS, some authorization to occupy the submerged lands of the OCS would be required before construction could legally take place. Use of federal lands, including the OCS, requires some form of permission, such as a right-of-way, easement, or license.[76] Use or occupancy of the OCS without such authorization arguably constitutes common law trespass.[77] However, the Court of Appeals for the Fifth Circuit has held that because the United States does not own the OCS in fee simple, it cannot claim trespass based on unauthorized construction on OCS.[78] On the other hand, the court stated, "[n]either ownership nor possession is, however, a necessary requisite for the granting of injunctive relief," because the United States has paramount rights to the OCS and an interest to protect.[79] Thus damages, available under trespass, may not be available for unauthorized construction on the OCS, while injunctive relief would appear possible even under more constrained interpretations of U.S. authority.

It appears that no federal agency, including the Army Corps of Engineers, which permits structures only for navigability purposes, can authorize the occupation and use of OCS lands for wind or other renewable energy purposes under current law. In the *Alliance* case, the plaintiffs claimed that the Corps had acted unlawfully by issuing its permit knowing that the project applicant would not be able to acquire the

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[73] Act of Aug. 7, 1953, ch. 345, 67 Stat. 462 § 4(f).

[74] H.R. Conf. Rep. No. 95-1474 at 82 (1978), reprinted in U.S.C.C.A.N. at 1674, 1681.

[75] *Id.*

[76] Several federal laws would appear to indicate that Congress intends usage of the OCS to be undertaken only when permission has been expressly granted. *See* 43 U.S.C. § 1332(1), (3) ("the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition ....;" *see also* 42 U.S.C. § 9101(a)(1)(stating that the purpose of the Ocean Thermal Energy Conversion Act is to "authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion facilities.").

[77] *See* 43 U.S.C. § 1333(a)(2)(A) (applying the criminal and civil laws of states adjacent to the OCS as federal law); see also Guy R. Martin, *The World's Largest Wind Energy Facility in Nantucket Sound? Deficiencies in the Current Regulatory Process for Offshore Wind Energy Development*, 31 B.C. Envtl. Aff. L. Rev. 300, n.96 (2004).

[78] United States v. Ray, 423 F.2d 16, 22 (5th Cir. 1970).

[79] *Id.*

3006

requisite property rights to construct its project.[80] The court did not directly address the issue of whether property rights on the OCS could be granted for renewable energy projects under the current administrative system; however, the court did decide that the Army Corps is not required to validate existing property rights or otherwise become involved in ongoing property disputes prior to issuing a navigability-related permit.[81] The Alliance to Protect Nantucket Sound argued, and continues to argue on appeal, that because the applicant for the permit could not legally obtain the requisite property rights, the Corps was in violation of its own regulations.[82] Corps regulations state:

> A DA [Department of the Army] permit does not convey any property rights, either in real estate or material, or any exclusive privileges. Furthermore, a DA permit does not authorize any injury to property or invasion of rights or any infringement of Federal, state or local laws or regulations. The applicant's signature on an application is an affirmation that the applicant possesses or will possess the requisite property interest to undertake the activity proposed in the application. The district engineer will not enter into disputes but will remind the applicant of the above. The dispute over property ownership will not be a factor in the Corps public interest decision.[83]

The Corps interprets these regulations to require only that an applicant affirm that it possesses or will possess the requisite property rights prior to construction. The court found the agency's interpretation to be "entirely consistent with its regulations."[84] Thus, in accordance with this decision, the Corps does not have a responsibility to deny a permit even when property rights cannot presently be obtained; however, construction on the OCS without first obtaining these rights would remain unlawful.

Recent Legislation. Several bills that address offshore wind facility siting have been introduced. H.R. 793 would amend the OCSLA to authorize the Secretary of the Department of the Interior to grant easements or rights-of-way on the OCS for activities, such as renewable energy projects, not otherwise authorized in the OCSLA or other law.[85] Among other things, H.R. 793 would require the Secretary to establish "reasonable forms of annual or one-time payments" that are not based on "throughput or production" for any property interests granted under its provisions, and would also authorize the Secretary to establish "fees, rentals, bonus, or other

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[80] Alliance to Protect Nantucket Sound v. United States Department of the Army, 288 F.Supp. 2d 64, 67 (D. Mass. 2003).

[81] *Id.* at 77-78.

[82] *See id.* at 77.

[83] 33 C.F.R. § 320.4(g)(6).

[84] Alliance to Protect Nantucket Sound, 288 F.Supp.2d at 78.

[85] H.R. 793, 108th Cong. (2003); *see also* H.R. 5156, 107th Cong. (2002).

3006

payments" that would not appear to be subject to these limitations.[86] Additionally, the bill would require the Secretary to consult with other federal agencies and to prescribe any necessary regulations to assure "safety, protection of the environment, prevention of waste, and conservation of the natural resources of the outer Continental Shelf, protection of national security interests, and the protection of correlative rights therein."[87]

Very similar language is contained in several versions of the Energy Policy Act of 2003, H.R. 6[88] and S. 2095.[89] Section 321 of both bills contains a measure not found in H.R. 793 that would exclude projects that have been constructed before the date of the bill's enactment or for which a request for proposal has been issued by a public authority from resubmitting "documents previously submitted" or obtaining "reauthorization of actions previously authorized."[90]

A different approach is taken in H.R. 1183,[91] which would amend the Coastal Zone Management Act to provide for the location and permitting of renewable energy facilities in the marine environment.[92] Unlike H.R. 793, this bill would apply solely to the siting of renewable energy facilities, defined in the bill as "a source of energy that is regenerative and is produced without depleting or otherwise diminishing the resource from which such energy is derived. Such term includes, but is not limited to, solar, thermal, and wind energy sources."[93] The bill would establish a federal licensing program, managed under the authority of the Secretary of Commerce, for facilities in federal waters. Among other things, the bill contains provisions requiring environmental, national security, and safety regulation in consultation with other agencies and would require the Secretary of Commerce to identify those waters under federal jurisdiction that have the greatest renewable energy potential.[94]

Conclusion. Interest in developing offshore wind energy resources continues to grow, and projects are already in the initial stages of development. It would seem clear that the United States, vis-a-vis other nations, would have the right to permit offshore development in its territorial sea and on the Outer Continental Shelf, subject to state authority over offshore areas under the Submerged Lands Act. Currently,

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[86] H.R. 793, 108th Cong. § 1(b) (2003) (amending 43 U.S.C. 1337 and adding new subsection (p)).

[87] *Id.*

[88] H.R. 6, 108th Cong., § 321 (2003).

[89] S. 2095, 108th Cong. § 321 (2004).

[90] *Id.* § 321(c).

[91] H.R. 1183, 108th Cong. § 2(b) (2003).

[92] *Id.* § 101.

[93] *Id.* § 3(a) (amending 16 U.S.C. 1453 and adding new subsection (17)).

[94] *Id.* § 202.

3006

there is no federal law that authorizes an agency to transfer property rights or license the use of federal offshore areas for renewable energy purposes. It is also questionable whether the Army Corps of Engineers, which has jurisdiction under the Rivers and Harbors Act and the Outer Continental Shelf Lands Act to permit obstructions to navigability, is authorized to issue permits for offshore wind development under current law. Multiple pieces of legislation have been introduced to respond to these concerns and would create significantly different regulatory regimes. At this time, however, offshore wind energy projects continue to move forward despite legal uncertainty and a lack of comprehensive regulation.

3007

Adams, Karen K NAE

From: wewillie522@thevillages.net
Sent: Monday, January 31, 2005 1:19 PM
To: Energy, Wind NAE
Subject: Ensure 'Cape Wind' Project Is Safe for Wildlife

Colonel Thomas Koning
U.S. Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

Dear Colonel Koning,

Before you approve or deny a permit to erect 130 turbines in Nantucket Sound, please require the developer to conduct the thorough studies recommended by the U.S. Fish and Wildlife Service and the Massachusetts Division of Fisheries and Wildlife.

Specifically, the environmental review of this project should include:

- Three full years of visual observations of birds
- 12 months of radar observations of flying wildlife
- A thorough and timely review of the project's potential effect on wildlife, including marine mammals

These factors will help determine whether the Cape Wind project is in the best interests of both the public and wildlife.

As it is written, the U.S. Army Corps of Engineers' draft environmental impact statement is hopelessly flawed, because it ignores relevant information and draws conclusions based on inadequate research.

This project could be the first marine wind energy facility in the United States. As such, it will set a precedent for other offshore renewable energy projects.

Please require a rigorous, scientific review of its environmental effects. Clean air and healthy wildlife populations are not mutually exclusive. We need both.

Sincerely,

Diane Hartman
7392 SE 173rd Arlington Loop
The Villages, Florida 32162

3008

Adams, Karen K NAE

From: Victor Colantonio [vcolantonio@comcast.net]
Sent: Monday, January 31, 2005 4:41 PM
To: Adams, Karen K NAE
Subject: Cape Winds Draft EIS e-mail & word.doc

January 30 avian study objecti...

January 30, 2005

From: Victor Colantonio
99 Franklin Street
Newton, MA 02458-2411
and
55 Lighthouse Road
Cape Poge, Chappaquiddick
Edgartown, MA 02359

RE: Cape Wind; Draft EIS Section 5.7

To: Karen K. Adams, Chief, Permits & Enforcement Branch
Regulatory Division
Army corps of Engineers
Via e-mail to: karen.k.adams@usace.army.mil and Fax 978-318-8303

I hope to make a few submissions containing my comments objections to the Draft EIS. This submission discusses Section 5.7, specifically the Doppler avian study conducted in September 2002.

I have read the Draft EIS; studied the Tables, Figures and Exhibits. I attended the public hearing at MIT and read the promotional literature published by the developer. I am familiar with the project area in the Sound and I talked with two of the individuals that conducted avian studies while they were being performed. The Doppler radar installation was 200 feet from my house (viewpoint 91-C2) on the northernmost tip of Cape Poge, which is surrounded by the Cape Poge Wildlife Refuge, operated by The Trustees of Reservations.

Appendix 5.7.E. has a problem. The Fall study was terminated on September 30, 2002 prior to the Fall bird migration. I discussed the study's early termination on site with the field surveyors hired by Cape Wind. I told them that my experience was that the large flocks haven't moved in yet; they replied that the developer contracted them only until September 30 and that the study would end before the heavy bird traffic began. I asked what meaning could be attributed to a study that ended before the birds arrived? I was told that the developer wanted the project approved and large bird counts will not help do that.

Had the study continued through October and November I believe the results would have been dramatically higher, double or even triple the counts reported for the Fall. ACE and the public would have had much more accurate and completely different information about the phenomenal numbers of birds that not only pass through the project site but winter there. In 2002, thousands of swallows would have been counted in October plus many more birds would have been recorded overall. Likewise, that year, the avian counters would have witnessed the migration of thousands of Monarch butterflies that occupied Cape Poge and do so from time to time after crossing the Sound; flocks of swans that passed over the area; and the

swallows mentioned above. The avian report should be thoroughly challenged by ACE because it does not accurately reflect existing conditions in the project area and the applicant knowingly terminated the Doppler study prior to obtaining the fall migration count in October and November from the Cape Poge study site.

My conclusion, based on direct conversations with the people conducting the fall study (I believe to be Geo-Marine), the developer intentionally shortened the study period in order to produce favorable results. I have no direct information with respect to the Spring study, but looking at the dates May 8 to June 7, could the Spring study period have also missed the bulk of the migration for the same reason, to undercount birds, thereby underestimating impact and fatalities.

By terminating the count early, the fall numbers submitted to ACE do not show the true picture of the migrating population. The impact of the wind farm on millions more shorebirds and waterfowl cannot be assessed by ACE or the public due to this slight-of-hand by the applicant.

Assessing the avian fatality rates or the magnitude of other avian risks caused by the installation of 130 turbines, 390 blades, 520 flashing red and amber lights, and numerous fog horns, notwithstanding other project impacts like pile driving and rotor noise is impossible. The impact of 130 new perching opportunities posed by the WTGs, rails, ladders, and platforms plus the potential changes to aquatic life as it might impact resident and transient waterfowl feeding is also impossible to grasp from the data submitted.

By intentionally shortening the Doppler study to knowingly exclude the bulk of the migration, the applicant did not identify either the numbers or species of the October and November migration which may prove to be dramatically different than the September constituency. There is no way to know if October and November is more populated by songbirds, waterfowl or shorebirds from the current Doppler data. The applicant, in theory, has submitted its avian study as a conscientious good faith effort to provide accurate data upon which ACE and public decision-making can be made. The omission of relevant Doppler data for October and November from Cape Poge by the submission of 5.7E opens the door for scrutiny of the balance of the Draft EIS with respect to accuracy of data, study periods, relevancy of data to the project site and a determination of the applicant's underlying honesty in dealing with the EIS process.

If I am interpreting the data correctly, by counting only in September, it might seem plausible to ACE that using a 0.04 - 0.14 fatality rate per turbine per day as the applicant cited in a benchmark study from the Netherlands' Waddan Sea, could be predictive of fatality rates for Nantucket Sound. As an order of magnitude, would the Sound have double or triple the bird count as found at the Netherlands' project? Should one double or triple the fatality rates? Does two times more birds in count equate to two times more fatalities; 0.08 - 0.24 fatalities per turbine per day?

The possibility of these astonishing results may provide insight as to why the Fall avian study was cut short - to avoid an extrapolation leading to 0.14 bird fatalities per day per turbine x 130 turbines = 18.2 birds per day; 6,643 birds per year or 132,860 birds over the 20 year life of the project. If the bird count in the Northeast Flyway were doubled or tripled the benchmark in the Netherlands, the fatalities could grow to 36-54 birds per day, respectively during the peak migration periods and during winter holdover. Will the WTGs be fatal obstructions for landings / foraging by birds who winter in the Sound? Unlike land based wind farms where dead birds pile up at the base of towers, fatalities and injuries at sea can drift away or disappear to the sea floor, uncounted.

One thing is for sure, if the wind farm were ever built as proposed, the

whole environmental dynamic of the Sound would change. By using Doppler to supply only part of the avian story the applicant may be trying to seduce the ACE and the public into believing that there will be no significant impacts by Cape Winds.

Therefore, to recapitulate, Section 5.7 Avian Resources is deficient. I met with the study team on more than one occasion to say that the fall migration would be missed by the timeframe of the Doppler study conducted at Cape Poge. Anticipating the fall migration of swallows, I sought confirmation that the study period would include the heaviest swallow counts in October. The survey team told me that the Doppler site would be dismantled prior the beginning of the migration pursuant to the instructions of the Cape Wind. Questioning them further, I learned that the avian study was designed to show the project in the most favorable light and that counting thousands of swallows and the other birds in October and November would not achieve that goal.

Likewise, that year, the avian counters missed the migration of thousands of Monarch butterflies that occupied Cape Poge in 2002 and do so from time to time. The avian report should be thoroughly challenged by ACE and its consultants the applicant knowingly terminated the study prior to obtaining the fall migration count in October and November from the Cape Poge Doppler study site.

Aside from shorting the Fall count, Appendix 5.7A contains a lot of language that hedge potential outcomes and makes drawing concrete conclusions from the avian studies relative to project sitting, fatalities, avian behavioral changes, etc. virtually impossible. The many references to "gap in information regarding the birds that use Horseshoe Shoal have been identified"; 'information about avian abundance and use is lacking"; "Gaps in our knowledge of Horseshoe Shoal were found"; "Further studies of Horseshoe Shoal .... were recommended", etc.

The operative sentence of this appendix 5.7A might be the one beginning, "The lesson of Altamont ... there are risks .... Careful siting of these plants is paramount to avoid or minimize problems".

The site on Horseshoe Shoal is midway between the mainland and Martha's Vineyard and Nantucket making the Sound not just a flyover for millions of birds but a wintering destination as well. The millions more landings and takeoffs associated with foraging and wintering may cause a corresponding higher fatality rate as birds pass through the blade zones much more often than those on the north/south migration.

Today, songbirds transiting the Sound the have few places to land. The WTGs ' will offer a resting place and will put songbirds in more conflict with the blades. Also, the avian study could have tackled the effect, if any, of Southwesterly prevailing winds on Nantucket Sound. Flying in to the wind, per se, is the course of waterfowl when landing, taking off and gaining/loosing altitude. Since the blades face into the wind, they will be perpendicular to the birds' flight making the blades a significant hazard to transient and wintering waterfowl alike. How can this be assessed from the data provided? It cannot.

Can this be right? Table 2.1 lists the bird kills by various human activities. The 28,000 dead birds in the applicant's estimate per year, if using the Netherlands 0.04-0.14 upper limit of 0.14 birds per turbine per day, will increase the death count by a factor of 24% from 28,000 to 34,645 by virtue of this project. Does Cape Wind intend to add 130 turbines to the 11,000 in the count and would they then add 6,645 fatalities per year to the deaths of 28,000? An increase of turbines by 1.182% will increase bird kills by 23.73%?

If this wind farm were located on terra firma would the impact on birds be

3008

different? Certainly, common sense dictates that the impact on waterfowl would be significantly diminished.

The EIS states that towers without FAA lighting are less likely to kill birds since it is the lighting that attracts birds. Yet the applicant proposes two flashing red lights and two amber lights per WTG so will the proposed lighting increase the number of bird fatalities even more? What is the impact from the applicants white lights? Foghorns?

With regards to density and configurations of turbines, some wind farms cited by the applicant's references are configured on a linear basis, one row wide. If a bird gets past the blades of the one row, it is 'home free ', so to speak. Cape Wind plans a substantial 130 turbine array that is 6 deep in places and 10 wide, as best as I can figure. If a bird gets through one row it is only 10% through the array configuration. Will the configuration of the WTGs with six or ten deep result in greater bird fatalities than a single row system?

Last, the applicant states in Section 2.1 that visibility is an issue in determining bird kills. The Sound is subject to fog, snow and wind driven rain that diminishes visibility to nearly zero which will further increase the bird kills and exceed the projections presented. What then will be the avian fatality per turbine per day given all of these variables?

I oppose the Cape Wind project based on these and other considerations.

Sincerely,

Victor Colantonio

3008

January 30, 2005

From: Victor Colantonio
99 Franklin Street
Newton, MA 02458-2411
and
55 Lighthouse Road
Cape Poge, Chappaquiddick
Edgartown, MA 02359

RE: Cape Wind; Draft EIS Section 5.7

To: Karen K. Adams, Chief, Permits & Enforcement Branch
Regulatory Division
Army corps of Engineers
Via e-mail to: karen.k.adams@usace.army.mil and Fax 978-318-8303

I oppose the Cape Wind project in Nantucket Sound. I have read the Draft EIS; studied the Tables and figures. My objections to Cape Winds selection of Horseshoe Shoal in this submission are aimed at 'so called' big picture subjects relating to the reasons for my preference toward land based sites versus any site in Nantucket Sound (or on the sea bed of Buzzards Bay, Boston Harbor, Cape Cod Bay, etc.). I oppose the Cape winds project for the reasons cited below.

I live on the northernmost tip of Cape Poge, between the Cape Poge Lighthouse and the sea, on Chappaquiddick in Edgartown, Massachusetts. I have sailed the Sound extensively, fished its shores and witnessed first-hand the many moods of nature on the Sound both while at sea and along its shores.

Our home is surrounded by the Cape Poge Wildlife Refuge operated by The Trustees of Reservations. Our property is approximately 5 miles from the closest proposed WTG and the test tower, currently in place, is easily seen from our kitchen window. I believe our house might be the closest residence to the proposed wind farm and subject to the greatest visual and noise impact of any residence in the project 'viewshed'.

Our Cape Poge house is self-sufficient; we are off the electric grid and run our household primarily off of a Siemans photovoltaic solar system. I am a huge fan of energy conservation, photovoltaic and passive solar systems, wind power, and geo-thermal energy sources. I have been to Costa Rica's Lake Arenal near Tejona to see a ridge-top wind farm, the Tierras Morenas Wind Farm, and found it to be amazing – yet I oppose the Cape Wind project because of incredible negative aspects it will have on regional issues, local issues, on matters specific to the proposed expansive use of Horseshoe Shoal, the project's engineering issues, its visual appearance, and many unanswered environmental issues.

3008

A. Versus a wind farm located 5 miles offshore in Nantucket Sound any land based wind farm would be preferable. A land based facility is (i) easier and less expensive to build because men and equipment can easily access the building site; (ii) safer to build because land based sites are not subject to variances of ocean winds, seas, current, zero visibility, ocean hurricanes, and inaccessible facilities based on weather; (iii) easier and safer to operate and maintain; (iv) causes less environmental uncertainty and less risk because land-based facilities are not in a fluid environment; (vi) accessible by men and machinery 7x24, all day, every day to attend to any eventuality.

An inland facility could be appropriate if sited properly. Sites such as at Otis/Camp Edwards, Westover, the former Ft. Devens might be suited for a facility of this nature. A land based wind farm would be preferable to one located off shore.

The Otis/Edwards site, for example is off the beaten path yet served by major roadways, and generally restricted from public access. The soils have been contaminated for decades, unexploded ordinance is scattered about the property and the land has very little commercial value. It seems an ideal site for 130 turbines. On a land-based facility operators would have access 7x24 as opposed to Cape Wind being able to access offshore towers only when the wind speeds are less than 26-28 mph and seas are favorable.

A land-based facility could receive the 7x24 attention that a wind farm of this magnitude requires. Ancillary support for 7x24 operation and maintenance at an inland site would include additional resources of public safety (fire, police, EMTs) to attend to fire, vandalism, injured workers or other mishaps. Inland would offer a ready cadre of professional experts, tradesmen, engineers, as well as back-up equipment and specialty tools. In the event of a mishap or storm related damage, land based resources could be marshaled immediately where an off shore facility cannot.

The issues of inaccessibility by safety, security, technical staff, supervisory and managerial personnel to the facilities on Nantucket Sound versus selecting an inland site creates unnecessary and excessive risks for Nantucket Sound, especially when land based sites are available.

Versus a wind farm in Nantucket Sound, a land based wind farm will be better regulated with respect to resource uses (land use/seabed use), zoning (such as it applies), safety enforcement programs; monitoring and management systems; security; systems for compliance with numerous operational standards, regulations, codes, and engineering specifications; and, a land based facility would be subject to applicable local state and federal taxes, fees and licenses.

B. The notion that Cape Wind has selected Nantucket Sound as a wind farm site to avoid regulation and oversight is inescapable. Finding the geographic and jurisdictional 'loophole' that presents itself in Nantucket Sound, just beyond the 3-mile Massachusetts' jurisdictional limit should not be rewarded. The seabed that underlies the Sound, the waters, aquatic life, fish, avian life, mammals and all else that make up this national treasure should not be wasted on a project that has never before been attempted especially

3008

when there are sound, economic, environmentally appropriate alternatives readily available.

Notwithstanding the uncertain financial underpinnings of the project, in every respect, the measurable environmental risks far outweigh economic benefits that can be realized. If any economic benefit can be realized from an offshore wind farm facility, then surely the same benefits can be realized from a land based alternative with out the risk. The Sound is an important resource in many ways, even as backdrop to a passive pastoral scene, the Sound's intrinsic benefits touch almost all who have come in contact with it. The installation of the wind farm will destroy this visual, scenic, historic and recreational resource that the Sound has become.

The Sound is a very significant national treasure, a valuable natural resource as evidenced by property values along the coastline. The Sound is an undisputed economic engine driving the Massachusetts' economy with tourism and vacation destination dollars. I believe that, for these and other reasons, the Sound alternative should be denied in favor of a land site. The Sound is, fundamentally, the wrong place for this project. A land-based site is, fundamentally the right place for a wind farm of this magnitude.

C. Based on my business experience, less than five percent (5%) of new businesses hit their financial projections. Ninety-five percent (95%) of businesses either underestimate costs, overestimate revenues, take longer than expected to build, are under financed, miss crucial deadlines, are under staffed or over staffed, etc. As a result, most new businesses require more money, more time, and more resources than anticipated during the hype prior to actual start up. A project of this magnitude in Nantucket sound, there being no other example of an offshore wind farm of this size anywhere in the world, is 95% likely to experience economic turmoil and uncertainty. It is unconscionable, given the void of financial of data supplied by the applicant, that this project proposed off shore – versus at an inland alternative, could get such a foothold in the approval process.

Where are the irrevocable commitments from qualified financial institutions to fund the effort? Where are lists of installation precedents that will assure ACE and the public of the viability of an undertaking of this size and complexity in a critically important marine environment? There are none. A project of this magnitude, off shore, has never been attempted for good reason – because there are ample opportunities to build and operate them safely on shore.

I would hope that ACE can remember the many projects it s has reviewed that have attempted to seduce approval agencies with promises of viable, credible engineering undertakings that would promise benefits to mankind in almost biblical terms. I would like to review Cape Winds business plan, its financial commitments, institutional backing, how it plans to comply with its loan covenants, its project budget, completion schedules, marketing contacts, and how it will manage and maintain the systems necessary for a successful program. One environmental catastrophe would be a partially completed project left for the public to sort out in bankruptcy court or at the auction block.

3008

What management credentials, technical expertise, engineering capacity, financial capacity and marketing/sales contracts have been presented by Cape Winds to ACE as proof positive that they are qualified to be considered for such an offshore undertaking? I would be less concerned if Cape Winds were seeking a land based facility rather than this fragile environment – which, unfortunately is void of local control.

What has been submitted on project financing, vendor/supplier financing, construction management contracts, operational engineers' resumes, and maintenance procedures?

All of these economic issues are important because failure of many large projects can be traced to over-extended or inexperienced management and/or under financed projects. Eventually, cost cutting in critical areas such as safety, staff training, supervision, and compliance often follows. The courts are littered with law suits resulting from claims of negligence, malfeasance, non-compliance to operational standards, breaches of codes and manufacturers specifications which typically results in a circle of finger-pointing by and between ownership, suppliers, engineers, vendors and ultimately the approval agencies. Why jeopardize the Sound when in land sites are available?

D. A project of this size and complexity has never before been built in a seabed environment, anywhere. A land based wind farm facility has far fewer risks, has been built before and has a history of successful completions. Yet, Cape Winds has opted for Nantucket Sound as opposed to selecting vastly better suited land based site. Due ot the risks assessed for undertaking a project in the sound and the lack of risks attributable to a land based project I feel ACE should recommend a land based project and deny an offshore facility.

E. The tactics of the developer, stacking public hearings with screaming construction workers and union representatives at MIT Cambridge, smacks of the type of project that is more geared toward sticking-a-finger-in-the-eye of public sensibilities than undertaking and presenting the merits of a serious and solidly funded plan.

To propose a wind farm, literally, 'right in the face' of millions of permanent residents, tourists, and vacationers with the vast array of problems attributable to the undertaking is unconscionable when vastly more suited sites are available inland.

F. I visited a mountain top wind farm site in Costa Rica near Tejona; the Tierras Morenas wind farm. One third of the turbines were idle in a 30 knot breeze. A local hotel operator told me that the turbines required high maintenance because it is in a highly corrosive environment. The manufacturer had financial difficulty and repair parts were not available. The 32 wind turbines of Tierras Morenas were NEG Micon 750/44Kw turbines. NEG Micron was sold to Vestas (Denmark) and I have inquired as to why 33% of the turbines were idle at Tierras Morenas. Vestas has not yet replied to my inquiry. Another large stakeholder in the wind energy industry was Enron, before they filed for bankruptcy. The point is that it is unimaginable that Cape Wind could

3008

install 130 turbines in the Sound and have 33% of them idle as in Costa Rica. That is a risk I hope ACE avoids by selecting an inland alternative.

G. What information has Cape Wind supplied to ACE with respect to the structure of and amounts of insurance coverages; bonding capacity, sources and availability of funds (debt and equity) and sales contracts to sell the generated power? Are these documents available for public comment? A key issue is whether Cape Wind's business plan is sound and whether the public is adequately protected in the event it should fail.

H. What is management's expertise to build an offshore project of this nature? What vendor and subcontractor experience has been provided for offshore facilities? Is this information available for public comment?

I. The area selected by Cape Wind on Horseshoe Shoal is too large. Cape Wind aims to locate WTGs in areas containing navigable waters such as the NE-SW trough running trough between Horseshoe and Halfmoon Shoal that is suitable for small craft. In addition, the WTGs are placed too far to the southwest in the project area, limiting the navigational water SW of R N"2" on the west of Horseshoe and too far southerly into the Main Channel. The Main Channel is narrow and any further limitation by placing WTGs in water 20, 30 and 40+ foot deep will create safety problems and restrict otherwise navigable waters from sailors in small craft such as myself.

J. The visual impact of the WTGs from Cape Poge is a negative one. The simulations shown in the EIS do not give an accurate representation of the WTGs. Simple things are understandably missing from the simulation like the impact of afternoon sun off the WTGs reflecting sunlight back to shore like hundreds of children playing with mirrors. Nighttime impacts will contain the hundreds of red and amber flashing lights' reflective shimmering over the water back to the viewer's eyes. Aside from the view of the seaward horizon being broken by 130 WTGs which will be very unattractive, the image will also give WTGs the appearance of 'floating in the air' above the water due to the mirage effect that is so common on the water. From Cape Poge, Nantucket Island appears to rise out of the water into the sky due to this phenomenon. The applicant's computer simulation replicates none of these conditions. The shore, June, at sunrise viewing a massive infrastructure of windmills from Cape Poge is not an experience to look forward to.

I oppose the wind farm in Nantucket Sound because there are better suited sites available on land. There is no need for a prescription that calls for providing the benefits of wind power that Cape Wind espouses along with the significant undesirable impacts of an off shore facility when the same benefits can be gained with minimum undesirable impacts from a land based facility.

Sincerely,

Victor Colantonio

3008

January 30, 2005

From: Victor Colantonio
99 Franklin Street
Newton, MA 02458-2411
and
55 Lighthouse Road
Cape Poge, Chappaquiddick
Edgartown, MA 02359

RE: Cape Wind; Draft EIS Section 5.7

To: Karen K. Adams, Chief, Permits & Enforcement Branch
Regulatory Division
Army corps of Engineers
Via e-mail to: karen.k.adams@usace.army.mil and Fax 978-318-8303

I oppose the Cape Wind project in Nantucket Sound.

Section 4.1 Indicates that the "…. westernmost WTGs will be approximately 9.3 miles (15.0 km) from the island of Martha's Vineyard (Oak Bluffs) but negates the closer 5.6 statute miles or 4.5 nautical miles from the island of Martha's Vineyard, at Cape Poge, Edgartown. It is important to state the close proximity to homeowners on Cape Poge and to the Cape Poge Wildlife Refuge operated by the Trustees of Reservations. This diminishes the off shore distance by 40% from Oak Bluffs. The closer proximity dramatically increases the visual impact and dominance of the WTGs Cape Poge residents as well as recreational and commercial users of the Cape Poge shoreline. The WTGs are a negative visual impact on 200 year old Cape Poge Lighthouse.

Similarly, the closer distance to East Beach and the northern beaches of Cape Poge brings credibility to claims of negative interactions WTG blades and year round resident waterfowl, migratory waterfowl, shorebirds, migratory shorebirds and other migratory transients around the project area and the northeast shore of Chappaquiddick.

Section 4.1.1.3 Two flashing red lights 260 feet above MLLW and two flashing amber lights 35 feet above the water will result in a total of 520 flashing lights giving the appearance of a city skyline or Coney Island just off shore Cape Poge. The lights will be an eyesore to nighttime shoreline users. They will be confusing to mariners especially in inclement weather when some of the lights will be obscured by fog or mist and others will not. The lights covering the 24 square miles will obscure lighted navigational markers, especially red navigational aids and will cause general confusion.

Lights in the foreground might be visible but ones in the background could be enveloped in fog will, thus hidden. The shear number of lights will make nighttime navigational work in Nantucket Sound nearly impossible since it will be difficult to separate the existing lighted navigational aids from distant WTG lights yet appearing on the surface.

300B

It would be unbelievable if Cape Wind could make the flashing red lights flash randomly – then it would be impossible to pick the navigational aids out alt all! The end result will be that the WTGs will not only be dangerous physical obstructions to navigation themselves but they will render the rest of Sound, whenever the WTGs lighting falls within visual plot line of a charting seaman, a very dangerous situation. Collisions, groundings, and the potential for loss of life, property damage and hazardous spills will be an increased risk due to the applicant's lighting plan. Collisions inclusive of vessel-vessel and vessel-obstruction and groundings are currently a problem; a land based wind farm would negate this risk.

Martha's Vineyard, Cape Poge specifically, is a historic shipwreck area. It is a site of accidents even every year. Even though the Island is marked by aids to navigation and Cape Poge has its own light house, all manner of mariner accidents each year can be documented by the harbormaster and Coast Guard. I have witnessed one sailboat and three powerboat accidents that were caused by human error of navigation that resulted in damage to property, personal injury and death. Had any of these vessels been around Horseshoe Shoal, to the extent that they collided with a 150 square mile island, there is no doubt they would have collided with a WTG monopile.

ACE should obtain and closely examine additional information relating to the negative impacts of the WTGs and ESPs on marine safety, navigational aids, ferry traffic, commercial fishing vessels, recreational boaters and fuel carrying barges.

The computer simulation of lighting contained in the Draft EIS should also include more practical information relating to an analysis of the visual impact of the WTG and ESP lighting plans against the existing navigational markers, shoreline water tower lighting, radio tower lighting, and the like. Only then could ACE and the public make an intelligent assessment as to whether tower lighting will be a determent to navigation. I am concerned that Windfarm lighting will render useless the existing aids to navigation.

This **Section 4.1.3** is inconclusive with respect to providing sufficient detail of the applicants' plans that could warrant meaningful public comment.

Section 4.1.3.1 states that the monopile "…. will be driven 50 to 90 feet into the seabed depending on local load bearing characteristics of subsurface marine sediment.' **Section 4.1.3.2** states that monopiles of 16.75 feet diameter will be used in water depths of 0-40 feet and 18.0 foot monopiles would be used in water 40-50 feet deep. The EIS further states that the monopiles will be driven approximately 85 feet into the seabed of Horseshoe shoal to provide adequate structural support for the WTG support tower and nacelle. What is the engineering math supporting the selection of the 85 foot depth with respect to the load bearing characteristics of the seabed? What is the maximum depth that a monopile can be driven in a seabed with the load bearing characteristics of Horseshoe Shoal? What is the safety factor, percentage beyond nominal failure, in the engineering calculations with respect to load bearing failure? Loads should be calculated with lateral loading from sea ice, plus simultaneous loading of highest

3008

expected current, high wind loading, extreme wave conditions, and two inches of above water ice loads, all together.

Section 4.1.3.3 indicates engineering criteria involving lateral loading from sea ice. The calculations should state the safety factors for the sea ice loading including simultaneous loading plus the highest expected current, plus high wind loading, plus extreme wave conditions, plus two inches of above water ice loads.

Will the applicant provide engineering studies indicating the engineering loads of the WTG support tower and nacelle to withstand ice loading on the above the water portion of the installation at 2 inch and 3 inch above the water ice loads? It would be important to evaluate the stability of the project to withstand extreme conditions simultaneous with above water ice loads as in the recent blizzard of January 2005.

Section 4.1.3.3 indicates that the pile foundation will (likely) be installed by mechanical hammer driving that will create significant noise. Since the applicant intends to drive 130 monopiles plus ESP monopiles and possibly additional piles with a mechanical hammer, what noise calculations have been provided to ACE to evaluate the noise from this operation? Additionally, the barge upon which the mechanical hammer is installed must be evaluated for its capability to sustain the sea, wind, current and ice loads appropriate for an operation of this nature. Has the applicant conducted such an operation before and has the applicant received the requisite experience to conduct and manage this project?

It is well documented that sound over water, particularly downwind, carries long distances. How far will the hammer noise carry downwind say in a 20 MPH breeze over water? Will the applicant provide noise analysis indicating the prevailing wind directions at various wind speeds so that an assessment of the hammer noise can be made? I am concerned that the hammers operation will disrupt the peaceful enjoyment private property owners, vacation properties, vacationers, shoreline facility operators, and negatively impact tourism. How long will the pile driving occur? What are the decibel levels and at what frequencies will the hammer operate? Who will monitor the noise created by the project? How will the applicant mitigate unacceptable noise levels if set by ACE as a condition of approval? Will the noise generated by the mechanical hammer negatively impact seals, whales, porpoises and other sea mammals? Birds?

Section 4.1.3.3 indicates that, "A design tidal current of 1 meter per second (m/sec) was applied ot the design analysis…." This translates to 3.3 feet per second and seems too low for a design factor with a margin of safety given that the actual current at Horseshoe Shoal as taken from Eldridge Tide and Piloting is 2.4 feet per second under normal (not storm) conditions. What is a reasonable design tidal current including consideration to maximum moon effect and gale winds? Maybe a safety factor of 100% normal conditions or 4.8 feet per second? In a hurricane maybe 200% or a current of 7.2 feet per second? Can this be recalculated at higher currents

3008

Section 4.1.3.3 indicates that "…. 1.18 inch ice cover over the tower and nacelle was included' which seems low. I believe that 1.0 inch radial ice is the design standard for typical high voltage power lines located inland. In an off shore environment it seems appropriate to use a failure assessment figure of at least 2.0 inches of ice cover for ice loading. Situate, Hull, Chatham and Plymouth water fronts were enveloped in 3 or more inches of sea driven ice. In blizzard conditions such as those of Jan. 23, 2005 how will the WTGs above the water ice loads be different from the ice loads at other, documented, seaside locations of 3 or more inches?

Section 4.1.3.3 indicates that the applicant's method of "…. scour protection …. is expected to result in little net change …. in terms of the geology and the biological community." Yet the paragraph continues on "In the event that the scour mats are found to be less effective ….", then, "rip rap is available as an alternative". This concern mandates that be some monitoring system in place to assess whether the scour mats are doing the job. The monitoring system should be documented and subject to public comment. Likewise, should the scour mat not work effectively, the applicant should have set aside sufficient funds to insure the financial capacity to rip rap the areas where the scour mat failed.

Like availability of contingent funds for rip rap, Cape Wind should, prior to completion of this EIS process, be made to prove it has sufficient funds to install the project and sufficient reserves to deal with anticipated yet contingent costs such as rip rap, strikes, acts of God, decommissioning, dismantling, etc.

Section 4.3.1 indicates that the method of installation of the monopiles will be "… pile driving ram or vibratory hammer". Is there a difference? If so, all the noise data requested for the driving ram should be submitted for the vibratory hammer. Will there be primary sound enclosures and secondary enhanced sound suppression enclosures to reduce noise as much as possible. Are there stringent noise criteria for federally administered waters? Will the applicant provide the manufacturer's noise data for the equipment that applicant intends to use for EIS evaluation.

The incessant pounding of the pile-driving ram may prevent the quiet enjoyment of coastal properties and deter tourism unless the noise associated with the operation is tightly monitored. The applicant should state the hours of operations for the actual construction activities, and notify the public by published public notice the dates of installation and work hours per day hours of monopile installation process; and, specific to the pile driving, hours of the day and days of the week of operation; its noise abatement procedures, plans for compliance to its procedures (self-enforcement, reporting) and maximum decibel levels that will be generated by each type of monopile installation method.

Section 4.3.4 pertains to the 115 kV submarine transmission cable. ACE must insure that monitoring and reporting processes are in place and that the applicant minimize seabed disruption and conduct the installation during periods of relatively slow currents, and calm sea conditions. In the event that sea conditions become extreme, what are the

3009

plans of the applicant to seek refuge for its barge and seagoing equipment close to the work site? Will the applicant be required to make arrangements with regional contractors (such as Clean Harbors) to mitigate risks associated with installation processes and for manpower in the event of a serious mishap. Will the applicant be required to make arrangements with barge towing contractors to insure that that risks associated with seagoing stages will have back-up vessels, equipment and manpower in the event of a serious mishap?

As a general concern: has the applicant, its managers (including as principals of other entities), its construction contractor or any firm conducting more than 5% of the project scope (i) ever had an environmental permit denied? (ii) ever been cited for actions under EEO or by OSHA? (iii) ever had a court, authorizing agency, approval authority order to cease certain work due to a.) environmental issues, mishaps, accidents, spills, etc.; b.) not possessing appropriate permits for work to be conducted; c.) not having trained and or licensed personnel for labor performed requiring such training or licensing; d.) been charged with malfeasance, neglect, incompetence, or been found liable for environmental clean–ups for any work directly or indirectly under their control; e.) had insurance claims made against them for damages, injuries or property damage for a work related nature; (iv) ever been found guilty of a felony?

Section 4.4 attempts to describe an O&M plan have yet to be written. The O&M plan is a vital section of this EIS that must be reviewed and available for public comment. An O&M plan is an indication whether the applicant's management team has the requisite experience to operate and maintain a project properly. There are serious questions to answer about the ability of the applicant to obtain (i) financial capacity to fulfill the promises made within this proposal including contingencies for overruns; (ii) manufacturers and suppliers to provide equipment on time and within budget; (iii) labor sources for expertly trained technicians; (iv) vendors to fulfill the subcontracts available by this undertakings; and management to coordinate the massive and complicated construction program and its aftermath, a complex operation and maintenance program. ACE might ask, is the O&M plan indicative of the way management will manage the marketing of the power produced by this project? Is it indicative of the level of effort given to construction supervision, regulatory compliance, and safety? If the ACE determines that the O&M plan, such as it is – is lacking detail sufficient for a meaningful review – then the project should be denied as proposed.

Section 4.4 mentions wind park security but provides no detail. An assessment of security matters is not possible.

Section 4.4 discusses maintenance intervals; "Based on both onshore and offshore WTG operational experience …." and therefore should cite a reference to the offshore experience used. Specifically with regard to WTGs, the location, year of installation, owner of WTG, contact person and phone number; approval agency, contact person and phone number.

3008

Section 4.4 mentions that 'experience has shown that wind speeds "must be less than 8 meters per second" to gain safe access to WTGs – although safe access is possible up to 12 meters per second depending on direction and sea state. A numerical translation of the 8 meter per second and 12 meter per second to miles per hour results is 17.8 MPH and 26.8 respectively. The paradox here is that the wind farm is proposed for Nantucket Sound a.) to be in a 'windy place' and b.) a place skirting waters subject to the laws of Massachusetts. Yet in selecting this site, the applicant's EIS states that the WTGs cannot be reached safely for either routine maintenance or emergency purposes when it gets too windy specifically when winds reach 17.8 mph, a moderate breeze, otherwise great sailing weather. The applicant mentions that it is possible to board the WTG with winds as high as 26 MPH but that is doubtful. The Beaufort Scale, the international standard, rates wind speed in knots measured 33 feet above the surface, designates the wind condition, predicts the sea condition, the approximate wave height in feet and give the common classification of Force 0 through 12.

The applicant indicates boarding the WTG is possible with a wind speed of 26 MPH which translates into a 'Strong Breeze', sea conditions are large waves, foam white foam crests everywhere, probably more spray. The approximate wave height is 9.5 feet and the condition is classified as Force 6. As difficult as it might be board a WTH under Force 6 conditions, it is nearly impossible to board the WTG in Force 7 through 12 conditions. Specifically, from Near Gale (28-33 mph), Gale (34040 mph, Strong Gale (41-47 mph), Storm (48-55 mph), Violent Storm (56-63 mph) and finally Hurricane (64+ mph) conditions. Further, notes to Beaufort indicate "In enclosed waters in or near land" as in the case of the proposed project site, "wave heights will be less, the waves will be steeper and not so long. In many tidal waters", such as Nantucket Sound and Horseshoe Shoal, "wave heights are apt to increase considerably in a very short time and conditions can be more dangerous near land than in the open sea." Anyone who has navigated Nantucket Sound when wind and sea conditions are foul and when high wind conditions oppose current direction will attest to the dangerousness of operating in Nantucket Sound. I have had personal experience dealing in Nantucket Sound as captain of vessels 35-40 feet under these conditions and know full well the havoc that can be brought on men and equipment especially during emergency efforts.

In addition, I would like to call the ACE attention to the past 50 year record of shutdowns due to weather for ferry service between the mainland and Martha's Vineyard and Nantucket. ACE should be willing to match the ferry shutdowns with weather conditions on the dates of shutdown and determine whether the applicant will be forced ot shutdown its operations on the same basis. The shutdown of ferry service will result in a small fraction of the periods that the WTGs will otherwise be inaccessible. The applicant will be unable to deliver men, equipment and tools to a damaged WTG. A more accurate picture would result from ACE's matching of NOAA weather data against the upper most safety limits (17.8 mph) to access the WTGs. This data, when correlated by month, time of day and possibly sea conditions will give a better understanding of the significance of Cape Wind's inability to access the WTGs and why this facility would be better sited on land which will have no such limitations of accessibility.

3008

It is not uncommon for wind conditions on Horseshoe Shoal to exceed the wind speed conditions needed to safely board a WTG, stated by the EIS as 17.8 mph, but high wind conditions, difficult sea conditions, fast currents, steep waves, waves breaking over the shallow shoals are precisely the times when wind farm technicians MUST have access to the WTGs and all of the other operating gear positioned in the Sound. None of this obvious lack of access during adverse weather and sea conditions would be the case if the wind generating facility were sited on terra firma. Does ACE anticipate that Cape Wind's wind farm will need emergency staff attendance, storm preparedness, pre-storm emergency staffing, emergency repairs due to wear and tear, acts of God, or human error EXACTLY when weather and sea conditions (a.k.a. a potential cause of the emergency) prevent Wind Farm employees from gaining access to the facilities. If so, ACE must deny the siting of WTGs in Nantucket Sound when other more serviceable, less problematic sites are readily available on land.

ACE must take into account the risks associated with an ocean storm exacerbating other problems including ongoing emergency operations. Severe weather causes additional gear failures; possibly undermining the stability of a particular WTG due to a potential yet inadvertently WTG ramming by a Wind Farm service vessel or barge (example: accidental ramming of the Vineyard Haven dock a MV Ferry); fast moving currents eroding the bottom around a WTG; eroding cover from buried cables; ground tackle dragging exposed Wind Farm bottom cables; storm related stresses cause ruptures to hydraulic or lubricant lines and/or fittings which would leak oils into the Sound, etc.

Section 4.4 EPS Service also states that ESP Service will be available for periods when wind and sea conditions are "unsuitable" for boat transfers (to WTGs) when a helicopter platform will be available to bring in support and to remove injured personnel. The difficulty with this idea is that the helicopter platform cannot service a entire 24 square mile area without boat transfers to the platform therefore the only benefit of a helicopter would be to service anyone already on the platform. There can be no doubt that boat transfers will be necessary to get personnel from the platform to WTGs. But boat transfers can't take place due to wind and sea conditions so this claim that a helicopter can 'pick-up' when the boat transfers give way is not credible. And it is not just when wind and sea conditions are a problem for boat transfers … it is when wind, waves, fog, snow, ice and other conditions yet encountered on Horseshoe Shoal prevent boat transfers and helicopter service that major, possibly catastrophic problems could present themselves. With specific respect to helicopter service, will the applicant establish, in an addendum to the EIS, (i) the limits of fair weather conditions under which the helicopter can operate safely in and around the proposed platform? Based on NOAA weather records with respect to each of wind, sea, fog, snow will the applicant determine the percentage of time of day and month of year, on average, that the helicopter will not be able to operate to provide emergency personnel to the platform or remove injured workers.

A wind farm located on terra firma would have access the WTGs, provide emergence personnel and remove injured workers all day every day; 100% of the time.

3008

Section 4.4 Submarine Cable Repair is another section that addresses the repair function in terms of ideal weather conditions. A marine repair cannot be conducted in adverse weather conditions at all. Even under mild, calm conditions even skilled crews jeopardize life and limb of the mariners, cable workers, and support personnel to finish a difficult job in a safe and efficient manner. If Cape Wind's wind farm were located on terra firma there would be no need for exotic marine cable repairs and access to underground cables would be 7x24, 100% of the time.

Section 4.5 Decommissioning discusses a financial instrument that will be in place from the beginning of construction to decommission the project. Rather than describe the decommissioning effort as a backward construction process the applicant must provide the details of the financial instrument, such as a series of bonds that indemnify various agencies and the public from construction issues, operational issues and decommissioning issues, that would permit decommissioning in an orderly manner. The description of the bond and the bonded amounts will give the ACE further insight into whether bonding companies view this project, its management, the site condition, the power market as bondable.

Can there be a value on a bond that covers all that needs to be insured on the seabed, for undersea cables, on land facilities, etc.

Section 4.6.1 WTG fluid containment discusses that leaks occur during maintenance (when the WTG is shut down) and during operation (when the WTG is not shut down). Therefore, fluid leaks occur all the time, which means that fluid containment personnel, monitors, and clean-up crews need to be available all the time. It is not enough to locate just fluid containment gear on each WTG without the personnel to detect spills. The applicant cannot commit to a 7x24 on site clean-up crew(s) because clean–up crews will be dispatched from a place the applicant has not yet designated. Clean-up crews might need to operate on the water, in order to do so, weather conditions have to be essentially calm; presumably, fluid containment cannot be performed in adverse weather conditions, e.g., high wind, waves, fog, or snow.

Men and vehicles cannot drive to the site to undertake a clean up as they could it the wind farm were located on land. Any major fluid leak will probably be handled like the one in Buzzards Bay, namely waiting for the oil to reach the shore and then scraping it off the rock and washing it off the birds. Will shellfish beds be affected by an spill? You bet they will. Will the applicant provide a 'financial instrument' to accept the full cost and liability of such a spill?

An issue that needs to be discussed by the applicant is what the applicant will do to mitigate spills from service vessels, barges, and spills resulting from vessels colliding with WTGs. Has the applicant got sufficient storage to support addition spill containment gear on WTGs in the event of something more than a lubricating oil spill or a few gallons of diesel fuel washed overboard in an open Gerry can?

3008

Section 4.8 states that a detailed security plan will be developed. The applicant has given no indication in this Section 4.4 as to what level the security plan will be implemented. This portion of the EIS should be resubmitted with detail that can be assessed.

Section 4.9 Safety: I believe it is irresponsible to claim that the turbines will have no impact on shipping, sailing, fishing or recreational boating ' during normal operations'. They are an obstruction to mariners just like an iron bow sticking out of the sea in a heavily traveled, congested, notoriously dangerous, quick changing stretch of water would be! The MV & Nantucket Steamship Authority has provided testimony to ACE that the WTS and the associated gear are obstructions to navigation and, likewise, they will have a negative impact on navigation of all types. The wind farm should be located on land; protected from general public encroachment, away from heavily trafficked thoroughfares whether highway or shipping lanes.

In the middle of Nantucket Sound there is no room for error both human and mechanical. The impacts, related to safety, created by the off shore location versus on shore alternatives are unacceptable. Will OSHA have jurisdiction over the project?

Section 4.9 mentions that a catastrophic event will trigger a response to 'avoid the creation of a hazard' which in fact can't be done because the very fact that a catastrophic event occurred is a hazard. Notifying the 'proper' authorities, the USCG, if fine but what indication does the applicant have that the USCG can or is willing to deal with the wind farm's catastrophic event? The next thing the applicant proposes to do is to notify its insurance carrier for an evaluation, presumably in advance of filing a claim. What insurance carrier does the applicant use? From where will the adjuster be dispatched? How long a trip to arrive in Nantucket Sound to make a determination whether to correct a catastrophic event, assign blame, settle liabilities, etc. This could take weeks, months or longer. How long did the oil barge operator take to correct the catastrophic grounding in Buzzards Bay?

Leaving the corrective actions of a catastrophic failure of the wind farm project up to an insurance carrier is unacceptable. The applicant must be forced to provide a time frame within which corrective action will be take, especially one involving a catastrophic failure indicative/predictive of additional catastrophic events of remaining WTGs, such that agencies of jurisdiction could seize bonds, cash, surety posted by the applicant for this purpose to effect immediate and conclusive corrective actions, including dismantling or decommissioning, as the case may be, in the event the applicant does not abide by the safety plan.

Section 4.9 is woefully inadequate, and therefore should be found unacceptable in its detail and suggested remedies as stated and implied. It seems that the only promise the applicant has made to correct a catastrophic event is to have a finger-pointing circle between the insurance carrier(s), the turbine manufacturer and possibly the construction contractor while the Cape Wind maintenance personnel keep score. One hopes ACE will instruct the applicant to write a safety section that speaks to the issues and sets out the

3008

applicant's understanding of how to marshal its own resources to manage a crisis of catastrophic proportions.

Section 5.1.3.1 Faults and Historic Seismic Activity deals with the applicant's claim that no activity has occurred with in 10 miles of the project area during the past 300 years. The distance of 10 miles is too small an area to address faults and seismic activity. Since the project is in the sea, the discussion should be widened to a 100 mile zone, at a minimum. As a result of the recent South Asia Tsunami caused by an earthquake and the destruction extending 1,000 miles only underscores the lack of understanding by the applicant in suggesting "ten miles of the project area". The applicant must provide additional and significant information [1]of seismic activities within the region that the US government has designated, Seismic Zone 2A. Further, since there are no similar structures built in a similar marine environment, the applicants should produce such reasonable engineering studies relating to the potential of a seismic event located anywhere in Seismic Zone 2A causing the liquefaction of the marine soil conditions in the project area, thereby causing ground failure resulting in WTGs and other structures to shift, tilt or fall over. Without this additional expanded information, it is unimaginable how ACE can assess the impact of seismic activity on the project.

In Section 5.1.3.2 the applicant cites certain aspects of mineral resources and includes access to a web page http://www.mms.gov/ld/PDFs/status.pdf which indicates that the project site may be subject to mineral leases and other activities after 2012. This raises a number of questions, as follows. Will the wind farm project site will be exempt from such mineral leases? Will the wind farm applicant receive the mineral rights to the site after 2012? Why has this area of the northeast, including Nantucket Sound been foreclosed from mineral leases by the federal government but remain open to uses by others, a.k.a. Cape Wind? Why would it not be in the interest of the federal government (read people) to foreclose the same area from development of energy resources? Notwithstanding the wind farm application as evidenced by the draft EIS, how is that Cape Wind and seek to lease in a territory where no Department of Interior MMS leases will be issued until 2013, if even then?

Does the applicant have a lease or will the applicant need a lease in order to develop this project? If so, what form will the lease take (term, rent, fees, indemnification, and all other financial considerations)? Does the applicant have the financial capacity to execute such lease and maintain the lease for the term of the project?

Section 5.2.3.3 indicates that 'no extensive wave data for Nantucket Sound exists" yet the assumptions of the applicant are low. I live on the northern Cape Poge shore facing Horseshoe shoal and have first had experience of waves, during weak storms, reaching 10-12 feet. In the late 1970-early 1980's I sailed a Fagawi Race from Hyannis to Nantucket in which winds were approximately 40 knots and seas in Nantucket sound were 12 feet everywhere and reaching 20 feet bordering Halfmoon Shoal. I am sure many coastwise mariners have routinely encountered wave heights in excess average 4.5 feet used by the applicant.

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[1] http://wwwneic.cr.usgs.gov/neis/states/states.html

3008

While a unique circumstance, the applicant must produce statistical engineering failure modeling representing hurricane wind conditions (64 MPH+) at maximum flood tide, with 20 foot seas, and a minimum 2 inch ice loading. Likewise, the applicant must indicate how it intends to service injured men and damaged equipment under those conditions.

Section 5.4.5.1.1 covers direct impacts of construction and decommissioning. The applicant has not assimilated the combined weather impacts but rather has handled each as an independent event that is not cumulative. For example, underwater noise will be a detriment to finfish; impacts to sandwaves (4-5 feet to as much as 15 feet high) are unknown; the turbidity (TSS) of the waters surrounding the construction sites will increase which will stress fish; increased TSS due to cable plows; increased vessel traffic will change the habitat; the installation of the towers will change the seabed and so it goes with a systematic and incremental change to Nantucket Sound. The difficulty I have is in the applicant's inability to accurate project the cumulative environmental impacts of these seemingly minor disruptions. What happens when all these impacts occur at the same time – when they are simultaneous are they cumulative?

Section 5.4.5.1.1, the vibrations and sound () generated by the operation of the WTGs is a negative impact on finfish and possibility sea mammals yet the applicant cites two European projects as a counter to these negative impacts without determining whether the shallow Horseshoe Shoal conditions or the non-structural sand bottom are comparable to the European examples.

Although the applicant states that there will be no sound from the undersea cables, but will there be radio frequency emissions (RFI) or electro-magnetic interference (EMI) created by the turbines that would impact sea life? Birds?

Given the data supplied by the applicant, it is reasonable to conclude that sandwaves in the project area will disappear? Will current changes caused by monopiles flatten the seabed in the project area? Finfish will leave the area due to the disruption of the bottom but will sea life change near the WTGs due to increased vessel traffic, turbidity and noise?

Sincerely,

Victor Colantonio

3009

Adams, Karen K NAE

From: lodiza@sover.net
Sent: Monday, January 31, 2005 7:43 PM
To: Energy, Wind NAE
Subject: Ensure 'Cape Wind' Project Is Safe for Wildlife

Colonel Thomas Koning
U.S. Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

Dear Colonel Koning,

Before you approve or deny a permit to erect 130 turbines in Nantucket Sound, please require the developer to conduct the thorough studies recommended by the U.S. Fish and Wildlife Service and the Massachusetts Division of Fisheries and Wildlife.

Specifically, the environmental review of this project should include:

- Three full years of visual observations of birds
- 12 months of radar observations of flying wildlife
- A thorough and timely review of the project's potential effect on wildlife, including marine mammals

These factors will help determine whether the Cape Wind project is in the best interests of both the public and wildlife.

As it is written, the U.S. Army Corps of Engineers' draft environmental impact statement is hopelessly flawed, because it ignores relevant information and draws conclusions based on inadequate research.

This project could be the first marine wind energy facility in the United States. As such, it will set a precedent for other offshore renewable energy projects.

Please require a rigorous, scientific review of its environmental effects. Clean air and healthy wildlife populations are not mutually exclusive. We need both.

Sincerely,

lodiza lepore
334 Dewey St
Bennington, Vermont 05201-2225

3010

Adams, Karen K NAE

From: Sonyaborges143@hotmail.com
Sent: Monday, January 31, 2005 8:49 PM
To: Energy, Wind NAE
Subject: Massachusetts needs wind energy

Wind power is a promising choice for Massachusetts' energy future. We need to ensure that the Cape Wind Project receives a prompt and thorough review that keeps the public interest at the forefront. Please help both our enviroment, wildlife and community by taking a serious interest in a cleaner and more affordable sources of energy.
sincerely,
highly concerned citizen Sonya Borges
Sonya Borges
37 Sherwood Dr
Bradford, MA 018358130

Adams, Karen K NAE 3011

From: Texas-Redhead@care2.com
Sent: Monday, January 31, 2005 9:15 PM
To: Energy, Wind NAE
Subject: Ensure 'Cape Wind' Project Is Safe for Wildlife

Colonel Thomas Koning
U.S. Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

Dear Colonel Koning,

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Sincerely,

KC Curry
7202 W Sun Lane
San Angelo, Texas 76901-9759

3012

Adams, Karen K NAE

From: blakelycharity@msn.com
Sent: Tuesday, February 01, 2005 12:42 AM
To: Energy, Wind NAE
Subject: Ensure 'Cape Wind' Project Is Safe for Wildlife

Colonel Thomas Koning
U.S. Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

Dear Colonel Koning,

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Sincerely,

Carmen Blakely
1439 Windjammer Loop
Lutz, Florida 33559-6734

3013

Adams, Karen K NAE

From: furisdead@mybluelight.com
Sent: Tuesday, February 01, 2005 12:55 AM
To: Energy, Wind NAE
Subject: Ensure 'Cape Wind' Project Is Safe for Wildlife

Colonel Thomas Koning
U.S. Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

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Sincerely,

Cynthia Kimurra
5050 E. Garford St. #16
Long Beach, California 90815

3014

Adams, Karen K NAE

From: fundforanimals@e-appraise.com.every1.net
Sent: Tuesday, February 01, 2005 9:53 AM
To: Energy, Wind NAE
Subject: Ensure 'Cape Wind' Project Is Safe for Wildlife

Colonel Thomas Koning
U.S. Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

Dear Colonel Koning,

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Please require a rigorous, scientific review of its environmental effects. Clean air and healthy wildlife populations are not mutually exclusive. We need both.

Sincerely,

Desiree Mehbod
11776 Stratford House Place
#1301
Reston, Virginia 20190

3015

Adams, Karen K NAE

From: Bob Hayman [bob@rwhayman.com]
Sent: Tuesday, February 01, 2005 10:56 AM
To: mepa@state.ma.us; Energy, Wind NAE
Subject: save our sound

Dear Sir, I send you this email in the hopes that you will be able to stop the development of the Wind Farm. I have lived on Martha's Vineyard for all of my life and I feel it would be a great mistake to have a development on federal/state land or water. Not to mention the loss of the sheer beauty of this water.
Please do your best to stop this project.
Thank you,
Bob Hayman
Edgartown MA

3016

Adams, Karen K NAE

From: DrSuss@aol.com
Sent: Tuesday, February 01, 2005 11:11 AM
To: pdascombe@capecodcommission.org; mepa@state.ma.us; Energy, Wind NAE
Cc: comments@saveoursound.org
Subject: Cape Wind

Attn:
Phil Dascombe
Ellen Roy Herzfelder
Karen Kirk-Adams

We are residents of Sandwich, Cape Cod, MA.

This past weekend, I spent some time in Palm Springs, CA and I had the misfortune to pass by and see the enormous wind farms just outside this once beautiful town. They are ugly, noisy and a blight on the scene.
I am full aware of the need to use renewable energy sources and wind power is a vital part of the solution but to put these massive, ugly, towers in the pristine waters of Nantucket Sound is a travesty.
The islands of Nantucket, and Martha's Vinyard along the south coast of Cape Cod form one of the most beautiful places on Earth. Putting up those towers would destroy the view, damage the environment, play havoc with navigation on the waters due to frequent fog conditions and in every way negatively effect the lives of the inhabitants and tourists who make use of these waters and beaches every year.
Please deny Cape Wind the right to do this to us.

Sincerely yours,

Richard and Mila Susskind
6 Wintergreen Lane
Sandwich, MA 02563

January 31, 2005

Ms. Karen Kirk-Adams
Cape Wind Energy EIS Project
U.S. Army Corps of Engineers, New England District
696 Virginia Road
Concord, MA 01742

Ref: Army Corps of Engineers Draft Environmental Impact Statement for the Cape Wind Project
Re: Written testimony in favor of the Cape Wind Project

Dear Ms. Kirk-Adams,

I am an engineer and my wife is a nurse. We are natives of Massachusetts and my wife's family has lived and worked on Cape Cod for many years. However, I believe we speak not just for our family but for all those who would like to see the human experiment continue – wherever they may reside. We respectfully request that you accept the following comments as our response to the call for public input on the Cape Wind project.

The Big Picture Our industrial society has become completely dependent on massive flows of petroleum to maintain our economy and our standard of living. No country uses more energy per capita than the United States. We are less than 5% of the world's population and we consume more than 25% of the world's energy.

No region of the United States is more dependent on petroleum than the Northeast. On top of the direct uses for transportation, agriculture and industry, our region has the highest consumption of oil per capita for heating and electrical generation of any in the country. It is fair to say that our regional economy is currently tied in 'lock-step' to the availability of oil and oil-derived energy.

The cost of oil has gone up >50% over the past 18 months. The cost of natural gas has also increased dramatically. We can not take for granted that the availability of relatively inexpensive oil and gas will continue.

Recently our president went, hat-in-hand, to ask the oil producing cartel to increase their output. Once again, our Great Country had to beg OPEC to raise crude oil extraction to meet our needs The answer from OPEC gave us all a very clear understanding of our immediate future prospects for the availability of oil. OPEC agreed to increase extraction but was only able to provide ~1.5 million barrels / day (Mbbl/d) more oil to the world market. When you consider that the average daily world demand was then about 82.5 Mbbl/d, the elasticity in the world oil market (amount of oil available vs. demand) is now less than 2%.

With energy demand exploding in China, India and the Pacific rim, conservative projections call for world oil demand to top 84 Mbbl/d within the next 12 months. It should be very clear that increasing demand chasing diminishing reserves will continue to drive oil prices upward.

End of Cheap Oil Today's economists, and the politicians that, of convenience, align with them, are in a never-never land of belief that there are infinite stores of oil and natural gas that will be available at yesterday's prices for generations to come – if only the environmentalists and the government regulators would just get out the way and let the free market function.

This is a global resource game of musical chairs. So long as the music keeps playing, the majority of people have not yet noticed that the chairs are gone.

It is by no coincidence that, over the past year or so, a number

of the biggest multinational oil companies have "restated" their recoverable reserves and, that these restatements have all been downward. Big oil underwent this public shame and financial peril because the gap between geological reality and their annual reports had become simply too much to pretend anymore. We can expect more of the same in the future.

It is our firm belief that the economic tectonic plates of industrial society will undergo a profound shift in the not-to-distant future as the "perfect storm" in energy which is just around the corner becomes clear to enough people that the charade can no longer be maintained. When this happens, the old economic benchmarks for what energy is "worth" will change forever.

The debate over when the last drop of oil will be extracted will never be settled and it needn't be. It is largely irrelevant. What matters, of course, is when the world economy - now completely dependent on cheap oil and gas – will begin to falter due to price escalation and lack of supply. By then, the window of opportunity for a manageable transition to the post-petroleum era may be largely behind us.

Indeed the "free market" will function and, as the world markets begin to understand what **Peak Oil and Gas** really mean and, how this will impact every sector of world commerce, prices for the remaining "conventional" energy will soar. Has anyone forgotten what the futures speculators at Enron did for CA electricity pricing when the market was free to act?

As the cover story of the June 2004 National Geographic proclaimed, the era of cheap oil is over. The August 2004 cover of Fortune magazine, the bastion of capitalism, featured a drug syringe with oil dripping out and admonished the industrial world that it's time to Kick the Oil Habit.

Last year, the very conservative Economist proclaimed the End of the Oil Age. TIME, National Geographic and a number of other publications have devoted entire issues to Global Warming and a recent issue of the New Yorker dared illustrate the clear and undisputable linkage between resource depletion and war – past, present and future.

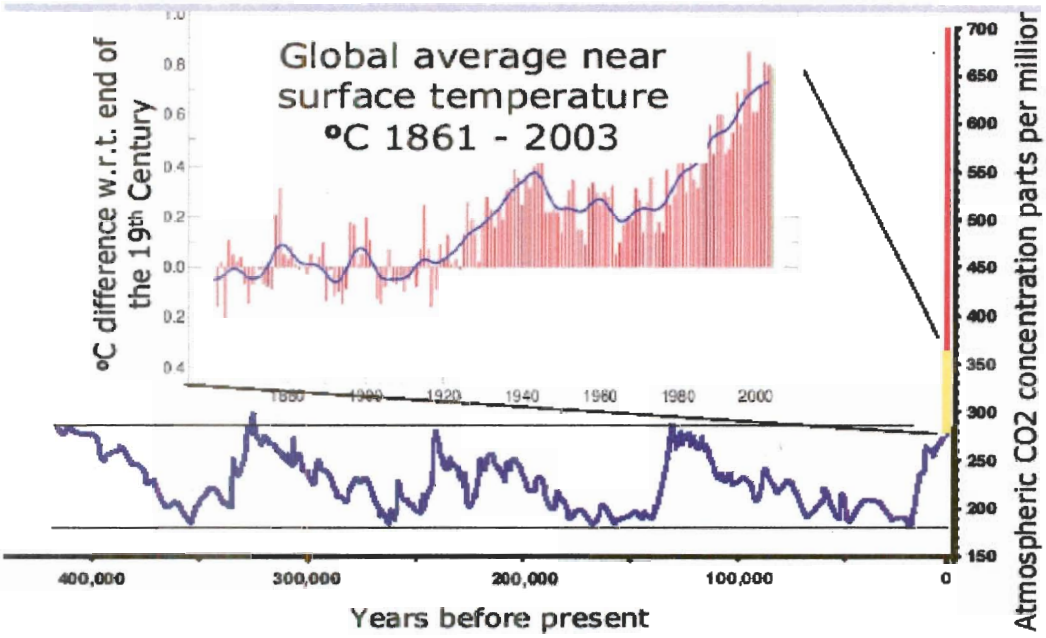
Climate Change A decade or two ago, it could still be passed off as conjecture. Now, the future is unfolding before our eyes. Canada's Inuit see it in disappearing Arctic ice and permafrost. The shantytown dwellers of Latin America and Southern Asia see it in lethal storms and floods. Europeans see it in disappearing glaciers, forest fires and fatal heat waves.

Climate change is with us. Scientists see it in tree rings, ancient coral and bubbles trapped in ice cores. These reveal that the world has not been as warm as it is now for a millennium or more. The three warmest years on record have all occurred since 1998; 19 of the warmest 20 since 1980. And, the Earth has probably never warmed as fast as in the past 30 years - a period when natural influences on global temperatures, such as solar cycles and volcanoes should have cooled us down.

Climatologists reporting for the UN Intergovernmental Panel on Climate Change (IPCC) say we are causing the change by the excessive combustion of coal, oil and natural gas. This releases billions of tons of carbon dioxide (CO_2) into the atmosphere every year.

The physics of the "greenhouse effect" has been a matter of scientific fact for a century. CO_2 is a greenhouse gas that traps the Sun's radiation within the troposphere, the lower atmosphere. It has accumulated along with other man-made greenhouse gases, such as methane and chlorofluorocarbons (CFCs) since the beginning of the industrial age.

If current trends continue, the best scientists in the world are convinced we will raise atmospheric CO_2 concentrations to double pre-industrial levels during this century. That will probably be enough to raise global temperatures by around 2°C to 5°C.



Temperature, CO_2 and Fossil Fuel Combustion – 1860 - 2100

Warming is bringing other unpredictable changes. Melting glaciers and heavy precipitation are causing some rivers to overflow, while evaporation and drought are emptying others. Diseases are spreading. Some crops and many weeds are growing faster while others see yields slashed by disease and lack of water. Clashes over dwindling water resources are already creating conflicts in many regions.

As natural ecosystems - such as coral reefs - are disrupted and degraded, biodiversity is reduced. While many species, mainly insects, are already evolving in response to warming, most species cannot adapt or migrate fast enough to keep up.

Thermal expansion of the oceans, combined with melting ice on land, is already driving measurable rise in sea levels. In the coming decades, atmospheric warming from human activity could trigger an irreversible melting of the entire Greenland ice sheet. This would condemn the world to a rise in sea level of some six meters - enough to flood land now occupied by billions of people. Melting of Greenland's ice sheet could also disrupt the thermohaline circulation that drives the Gulf Stream and its extension, the North Atlantic Drift, which brings warm, salty water to the northeast Atlantic, warming Western Europe.

Complete collapse of the Gulf Stream could well occur as large amounts of new fresh water from ice melt enter the thermohaline circulation in the north Atlantic changing the density and destabilizing the delicate balance of temperature and salinity that drives these massive global currents. The British Isles, Scandinavia and western Europe would be irrevocably changed. The Atlantic Maritime Provinces of Canada and the northeastern US would also be adversely impacted. This dire prospect is of such concern as to be addressed in a recent CIA/DOD report on the potential geopolitical impacts of climate change.

A very small, but vocal, minority of scientists argues that uncertainty over the exact pace and specific impacts of climate change is grounds for delaying action. However, the vast majority of scientists believe we are actually under-estimating the dangers. According to the IPCC, the world needs to quickly improve the efficiency of its energy usage and develop renewable, non-carbon fuels like: wind, solar, tidal, biomass, geothermal and wave power.

The bottom line is that we will need to cut CO_2 emissions by 70% to 80% simply to stabilize atmospheric CO_2 concentrations - and thus temperatures.

According to the Department of Energy, by 2025 – just 20 years from now - the United States will demand 43 percent more electricity. Where will all this additional new power come from? If current practices persist, 42 percent more greenhouse gases will be emitted with the dramatic increase in fossil fuel combustion required to meet the projected demand.

A Fork in the Road The warning signs have been ubiquitous. There is a fork in the road ahead. As individuals, as a region and a society, we have some serious choices to make and precious little time left to make them. We can choose to continue to blindly embrace conventional sources of energy – mainly petroleum – ignoring all the warning signs and await the consequences. Or, we can begin in earnest to define and implement the path to a sustainable future in the post-petroleum world.

Once, during a fit of despair over US policy he felt to be seriously misguided, Winston Churchill mustered sufficient optimism to tell his inner circle: "The Americans can be counted upon to do the right thing – after they have tried everything else."

We know renewable energy works. Wind and solar are now the fastest growing sources of new electricity in the world, with 30+% compounded annual growth for the last five years running. And, over these past decades, we have, indeed, tried everything else in US energy policy but renewables.

A Solution Within Reach The wind resources off of the southern coast of Cape Cod are among the most attractive in the country and represent a significant opportunity for Massachusetts to begin to harness this inexhaustible renewable resource for the benefit of all.

Cape Wind Associates (Cape Wind) is proposing to build the first offshore wind farm in the United States on Horseshoe Shoal, five miles off Cape Cod, Massachusetts. This pioneering effort will include 130 wind turbines producing a maximum output of 420 megawatts whose output would satisfy 75% of Cape Cod's electricity needs.

Thanks to the focused effort of the Army Corps of Engineers and the 17 other federal, state and local agencies involved in completing the draft Cape Wind Environmental Impact Statement (EIS), we have now have a solution within reach.

The 3,800 page Draft Environmental Impact Statement released by the Corps is the product of three years of scientific, environmental and economic analysis and includes the input from many federal and state agencies with inclusive public participation. The report shows that the Cape Wind project will produce compelling public benefits with negligible environmental impacts.

Cape Wind can replace 113 million gallons of oil per year, that it will reduce regional greenhouse gas emissions by one million tons per year (the equivalent of taking 162,000 cars off the road) and reduce New England's wholesale electric prices by $25 million per year. Its construction will create 1,000 new jobs and at least another 50 in the ongoing operation and support of the wind farm.

Offshore wind energy could soon provide an important source of clean electricity for our region, as it has in Europe, Australia and Japan for years. Our country is at least 10 years behind the rest of the world in harnessing wind energy. The Cape Wind project provides us the perfect opportunity to close that gap while benefiting from the technology development supported by the pioneering efforts of these other countries.

Unlike fossil-fuel-fired power plants that can be sited without much regard to their resource base - often being placed in the poorest communities - wind energy must be sited where the resources are. Fortunately, for all of us in the Northeast, we have a superb wind resource available right close by in an easily accessible location, which promises maximum return with minimum environmental impact.

When the opponents' objections are boiled down to basic terms, their main complaint is that they feel the turbines will diminish their ocean view from the shore. With the turbines many miles from

shore, the visual impact has been shown to be minimal – even on a very clear day. However, is hard to argue this issue with facts or logic. Ultimately, beauty is in the mind of the beholder. Many people find wind farms elegantly beautiful, even poetic. Others have another view.

It is instructive to note that experience with wind farms in Europe – both off- and on-shore – has shown they actually serve to increase tourism as people travel from far and wide to see the new beginnings of a clean and sustainable future. Interest in boat cruises to view the offshore wind farms has even created a new flow of tourist income to increment the local economies.

While one could conclude that wind turbine aesthetics are subjective, virtually everyone would agree the smoke plumes that come out of the oil-fired Canal Electric plant are both ugly and unhealthy. But the wind project's most vocal opponents do not have to look at (or breathe) those plumes. The most powerful among the opponents do not even live on the Cape – they just visit occasionally. And, when they do come, we're sure they turn their view to the west as they cross the Sagamore bridge to avoid the Canal Electric plant to the east, which currently supports their lifestyles.

They probably have also conveniently forgotten that just a year and a half ago, some 100,000 gallons of number 6 fuel oil bound for Canal Electric washed up on Cape beaches and tidal marshes because an incompetent barge operator couldn't find his way to the plant and ran aground. This was not the first oil spill in this fragile coastal ecosystem and it will likely not be the last.

Our region and our country are now faced with real choices about energy that demand response. Where will the energy come from to power our society tomorrow? How can we preserve the environment and support our way of life? The issue is not: wind energy or do nothing.

With all that is at stake for our state, our region and our country, opponents' worries their view may be diminished by turbines several miles out at sea seems a feeble and pathetically self-serving and shortsighted excuse for doing nothing. With such important benefits and minimal impacts, the Cape Wind Project should be approved for construction as soon as possible. Tapping into our offshore wind resources is an all-important first step in defining our transition to the post-petroleum era.

Draft EIS a Good Beginning The Draft EIS prepared by the Army Corps of Engineers and 17 other agencies is a comprehensive and detailed document that does a very thorough job examining all the potential impacts of the Cape Wind project. All in all, it concludes that the project's negative environmental impacts will be minor.

The Corps explored many reservations voiced about the Cape Wind Energy Project, and found the project impacts to be minimal. For example, the Corps found little to no interference with fishing activity due to the wide spacing between the proposed turbines.

Another popular argument of opponents to Cape Wind has been impact on bird populations. Again, the EIS found minimal impact. It is instructive to compare these results with the number of birds killed from other activities considered fully acceptable. For example, the National Audubon Society (who should know this subject) states that over 100 million birds are killed legally and illegally by hunters each year. It would be interesting to see just how many of Cape Wind's opponents who profess such an acute concern for avian wellbeing go out each year and kill birds just for the fun of it.

The U.S. Fish and Wildlife Service (who also should know this subject) states that cars and trucks kill between 80 and 100 million birds a year on our nation's highways and that tens of millions more are killed annually from collisions with high-voltage electrical transmission lines.

While the Audubon Society has estimated over 100 million birds are killed by house cats every year, they place habitat destruction – mainly from strip mining and clear cutting of forests – as the

3017

leading cause of long-term bird population decline. Oil and oil spills also needlessly claim far too many birds. Add to this the 65 million birds the Smithsonian Institution estimates are killed each year by pesticides and herbicides and, the 100 million + killed from simple collisions with glass in buildings and one can readily see that the avian impact argument is way over done. Wind turbines pose virtually no incremental risk.

Careful analysis by the Corps also indicates that many of the other concerns opponents raised about potential impacts - on tourism, the economy, on navigation – will not be significant. We applaud the Corps on their in-depth, objective, qualitative and quantities analysis of the many complex issues involved.

Unfortunately, some wrongly see the choice before us as: support Cape Wind or do nothing. This is clearly not an option. To put things in their true and proper perspective, we believe the EIS should go further, putting the minimal environmental impacts of this project in context by contrasting the much greater impacts of our other options to meet future energy demand such as coal and oil.

For example, it would be very desirable to see more information about the potential *benefits* of the project, such as the health benefits from the offset fossil fuel emissions and the benefits to the problem of global climate change in Massachusetts. According to estimates from analysts used by the EPA, fossil fuel power plants in Massachusetts are responsible for over 300 premature deaths, over 700 heart attacks and over 8,000 asthma attacks each year due to harmful emissions from their smokestacks.

The EIS should also contain more information on the economic benefits of the Cape Wind project. And, it should compare these benefits against the other methods that would be employed to generate the electricity we need such as coal, oil and nuclear.

Indeed, the choice is not: support Cape Wind or do nothing. We will need more electricity to support our way of life. Our region is facing a "perfect storm" in energy as conventional fuels decline and prices rise precisely because we have, as yet, done nothing to reduce demand for foreign oil by deploying renewable energy at a commercial scale.

The Cape Wind project provides us in Massachusetts with the first opportunity to champion offshore wind energy development in the U.S. while showcasing classic Yankee ingenuity of doing the most with what you have to work with. When weighed against the very real threats of climate change to coastal property and the decline in conventional fuels, the benefits of well-sited offshore wind power are starkly apparent and very compelling.

The transition to the post-petroleum era is already upon us. The leaders of several of the world's major oil companies have acknowledged this while also acknowledging that global warming and climate change are very real, are largely the result of excessive combustion of fossil fuels and, demand our immediate attention.

We have a very big challenge ahead of us. The region needs to harness all the renewable resources available to help support our energy requirements while building the bridge to the post-petroleum era. The time frame we have to do this is short. Cape Wind gives us the perfect opportunity to begin to set the course toward a sustainable energy future in the post-petroleum world.

The decisions before us today will dramatically impact the future of our region and of our country. We need to get started. This transition will not be an easy one under any circumstances. The Cape Wind project should get underway as soon as possible. There is no more time to waste.

Very truly yours,

Steven J. Strong
Marilyn H. Strong
252 Old Littleton Road
Harvard, MA 01451

301B

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION
89 Jefferson Blvd.
Warwick, RI 02888

January 31, 2005

Karen Kirk-Adams
U.S. Army Corps of Engineers
N.E. District
696 Virginia Road
Concord, MA 01742

RE: Cape Wind Associates

Dear Ms. Adams:

I am writing to support the Cape Wind Project and to emphasize its importance for meeting the electric needs of this region. One factor that has become increasingly clear and which should, at the heart of the Final Environmental Impact Statement, is that New England has a pressing need for new sources of electric generation, especially those that are not dependent upon natural gas. Notably, Cape Wind remains the only major generation project under active development within the New England Power Pool.

Just last summer, New England's electrical system operator, ISO-New England, warned that "current supply is forecast to meet extreme peak demand for power *only* through 2006." Further, ISO warned that many of our current generation units have been in service for more than 40 years, with some facing the possibility of retirement or deactivation. The ISO went on to report that more than one-third of our electrical supply now depends upon a single fuel, natural gas, a situation which the ISO identifies as a "risk factor" that potentially impacts our reliability in peak load periods. Finally, ISO warned that, in light of the long lead time on major energy projects, there is only a "brief window of time" to take the actions needed to maintain reliable electrical supply.

Further, ISO President Gordon Van Welie subsequently voiced additional concern that New England's supply of new electrical generation projects "has run dry" and that we have "no more generation investment in the approval pipeline." After further noting the continuing rise in fossil fuel prices and increasing difficulties in meeting the region's natural gas requirements, he concluded, "We've got to pay proper attention to alternative energy resources like wind."

3018

A similar conclusion was set forth in a report issued in June of 2004 by the US Department of Energy, which warned that the region's growing overdependence on natural gas places the reliability of our electrical service in substantial jeopardy. The DOE said, "The United States has seen unprecedented growth in the demand for natural gas across all sectors of the economy at a time when industry groups and regulators are concerned about the natural gas industry's ability to meet current requirements." The DOE concluded: "Increased use of renewable energy will enable New England to diversify the region's energy portfolio, thereby increasing electric reliability and lowering energy costs by utilizing local resources in the generation of electricity."

The DOE Report also pointed out that Cape Wind's production would coincide well with the region's needs on extreme cold days. When our electrical system was stressed to its limit last winter, Cape Wind "would have made a significant contribution to the power supply and reliability of the electrical grid." For many of the same reasons, Rhode Island recently joined Massachusetts, Connecticut and Maine in adopting a legislative mandate that minimum percentages of our electricity come from new renewable resources, a requirement based upon findings that increased use of renewable energy can lower and stabilize our energy costs, as well as create jobs.

Thus, the need for Cape Wind is regional in nature and the EIS review process must recognize that the continued reliability of New England's electrical supply is in serious jeopardy. The common theme in the recent warnings by ISO-New England and the Department of Energy is that immediate steps must be taken to enhance and diversify New England's electric resources. While the decision on Cape Wind will involve the balancing of many factors, the project's role in meeting the region's pressing need for new and diversified sources of electricity must be paramount. The continued reliability of our electric system to meet the needs of the public is essential not only to the health and safety of the public, but also to the vitality of the region's economy.

Sincerely,

Elia Germani

Elia Germani
Chairman

3019

Watertown Citizens for Common Sense Government
18 Copeland St
Watertown, MA 02472-1604

January 18, 2005

Karen Kirk-Adams
696 Virginia Road
Concord, MA 01742-2752

Dear Ms. Kirk-Adams:

On behalf of the Watertown Citizens for Common Sense Government, I urge you to support the Cape Wind Farm.

Our nation desperately needs to achieve energy independence. The Wind Farm will provide clean and renewable energy for Cape Cod. As a result, the regions dependence on foreign oil will be reduced and the additional supply of electricity will lower rates for most New Englanders. That in turn, will stimulate economic growth, which means more jobs and more revenues to the State.

But the most important reason to support this project is that this is environmentally friendly. By reducing pollutants we will help slow global warming and we will all be healthier for the effort. We believe these benefits alone far outweigh any negative impact to surrounding area or environment.

Finally, Massachusetts has a long tradition of taking the point in the battle for clean and renewable energy. Should the region take a "not in our back yard" attitude, it will greatly hurt the cause. Dare I say; it will perpetuate the notion that we are liberal elitist whose environmental consciences fail us at the slightest encumbrance.

Once again, we you urge to take an unequivocal position in support this project

Sincerely

John DiMascio
Communications' Director
Provisional Chairman
Watertown Citizens for Common Sense Government

www.citizensforcommonsense.com

Anne Peretz
20 Larchwood Drive
Cambridge, MA 02138

3020

January 31, 2005

Karen Kirk-Adams
Cape Wind Energy EIS Project
New England District
696 Virginia Road
Concord, MA 01742-2751

Via Fax: 978-318-8303
Via E-Mail: Karen.K.Adams@usace.army.mil

Dear Ms. Adams:

I have reviewed the findings of the US Army Corps of Engineers Cape Wind Draft Environmental Impact Statement and want to go on record as an enthusiastic supporter of the Cape Wind project at Horseshoe Shoal. I am a half time resident of the outer cape at Truro, and treasure the natural beauty and wildlife of our seashore. Cape Wind should be lauded for their efforts to select a site for their innovative experiment with its minimal negative consequences and such important environmental benefits.

I know I join many others who believe in this project as a significant advance in solving energy problems in New England.

Sincerely,

Anne L. Peretz